Plumbers, Gasfitters and Drainlayers Board

RADOVICH v GAINFORT

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/10)

Summary

Grant Kevin Gainfort, Certifying Gasfitter, was charged with supervision failings, issuing a false or misleading gas certificate, and failing to enter high risk gasfitting work on to the Electricity and Gas High-Risk Database. The charges related to gasfitting work carried out by Nicholas Gwynne under Mr Gainfort's supervision at a residential address in Tokoroa.

Mr Gainfort pleaded guilty to the charge.

The Board considered Mr Gainfort's conduct was moderately serious, but at the higher end of that range. The Board accepted there were no aggravating factors in the case and that Mr Gainfort's was entitled to credit for pleading guilty, been cooperative throughout the process, having no previous disciplinary offending, taking proactive steps to ensure there would be no repeat of his conduct and being remorseful.

The Board ordered Mr Gainfort to pay a fine of $3,150 and pay $4,000 towards costs.

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

BETWEEN **WAYNE RADOVICH**

Investigator

AND **GRANT KEVIN GAINFORT**
Certifying Gasfitter, of Cambridge

Registered Person

DECISION OF THE BOARD
21 September 2023

Hearing:	Held in Wellington on 26 July 2023
Members sitting:	Diana Kuhtz-Covich (Chair), Beth Healy, Tofa Suafole Gush, Barry Willcox, James Smith
Counsel:	Justine Sutton for the investigator Stephen Corlett for Mr Gainfort
Legal advisor:	Richard May

Disciplinary hearing

1. On 26 July 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Alan Nicholson against Grant Gainfort, Certifying Gasfitter. The complaint related to gasfitting work carried out by Nicholas Gwynne under Mr Gainfort's supervision at 42 Arthur Street, Tokoroa.

Guilty plea

2. On 14 June 2023, Mr Gainfort pleaded guilty to charges of failing to comply with a term or condition of his licence in relation to supervision, issuing a false or misleading return, and breaching an enactment relating to gasfitting. Mr Gainfort signed an agreed summary of facts, a copy of which is attached to this decision.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Gainfort had committed disciplinary offences under sections 89(c), 89(f) and 89(a)(ii) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

Penalty and costs submissions

4. On behalf of the investigator, Ms Sutton submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and maintain proper industry standards. She submitted that the principles that were relevant to the assessment of penalty in disciplinary proceedings were the need to ensure rehabilitation, treat practitioners consistently where possible, and to impose the least severe penalty appropriate in the circumstances.

5. Ms Sutton submitted that Mr Gainfort's conduct was serious as he had failed in his obligations as both a supervisor and a certifier. She submitted that the certification of gasfitting work as safe and compliant was an important check and safeguard for property owners and any other gasfitters who might have to carry out work on the installation in the future. She submitted that certificates needed to be accurate and complete for that reason.

6. Ms Sutton submitted that as a certifying gasfitter, Mr Gainfort ought to have known that he needed to take additional steps to properly satisfy himself that the gasfitting work carried out by Mr Gwynne was safe and compliant before he certified it. Mr Gainfort had not done that in this case and had simply relied on photographs and test results provided by Mr Gwynne.

7. Ms Sutton submitted that aspects of the gasfitting were defective and posed an immediate and therefore serious risk. She submitted that Mr Gainfort had also failed to enter the high risk gasfitting work on the Electricity and Gas High-Risk Database (**Database**) as required under the Gas (Safety and Measurement) Regulations 2010.

8. Ms Sutton referred the Board to previous decisions in cases involving negligent or incompetent gasfitting, filing false or misleading gas certificates, and failing to enter

gasfitting work on to the Database. Ms Sutton submitted that the decisions showed that the Board considered certification and supervision failings were serious, particularly given that gasfitting work was involved. The starting point for fines in the cases referred to had ranged from $8,000 (although this case did involve a charge of creating a risk of serious harm), to $3,000.

9. Ms Sutton submitted that a starting point for a fine in Mr Gainfort's case should be in the vicinity of $6000 to $7,000. Ms Sutton submitted that the investigator was not aware of any aggravating factors personal to Mr Gainfort, and he was entitled to credit for his guilty plea, acceptance of responsibility and cooperation, and lack of any previous disciplinary offending.

10. Ms Sutton submitted that the Board could require Mr Gainfort to make a contribution towards the costs of the investigation, prosecution and hearing. She submitted that the usual starting point for ordering costs was half of the actual costs in a case. Given Mr Gainfort's guilty plea and cooperation, Ms Sutton submitted that the Board may wish to consider a reduction from the starting point.

11. On behalf of Mr Gainfort, Mr Corlett submitted that Mr Gainfort accepted that he had not supervised Mr Gwynne as required and had failed to attend the property to personally test and commission the installation. Mr Gainfort also accepted that he had failed to enter the work on to the Database as required. However, Mr Corlett submitted that Mr Gainfort had genuinely believed Mr Gwynne was competent and would not have carried out unsafe work. He also submitted that Mr Gwynne was only weeks away from becoming a certifier and noted that this actually occurred only five weeks after the work at the property in Tokoroa was completed.

12. Mr Corlett accepted the relevance of the previous decisions put forward by the investigator and agreed that the cases which were most similar to Mr Gainfort's were the ones where the work undertaken by a supervisee had been defective and the supervisor had certified the work without taking adequate steps to check it. Mr Corlett noted that the starting point fines in those cases were $3,000 and $4,000. Despite that, Mr Corlett submitted that the investigator was seeking a fine with a starting point of $6,000 to $7,000 in this case which was double the starting point in the similar cases. Mr Corlett submitted that such a high starting point could not be justified in Mr Gainfort's case.

13. Mr Corlett submitted that an appropriate starting point for a fine should be $3,500. He submitted that this should then be reduced by 50% to reflect the mitigating factors personal to Mr Gainfort. They included his early guilty plea, lack of previous disciplinary offending, remorse, cooperation throughout the proceed and the steps he had taken to introduce a new work system to ensure his conduct would not be repeated. Mr Corlett submitted that Mr Gainfort's personal circumstances were also a mitigating factor.

14. In the circumstances, Mr Corlett submitted that a fine of $1,750 was appropriate.

15. Given his guilty plea and cooperation, Mr Corlett submitted that Mr Gainfort's contribution towards the costs in this matter should be 25% of the actual costs.

16. Mr Corlett sought an order of non-publication under section 113(3)(d) of the Act. Mr Corlett submitted that Mr Gainfort's personal circumstances at the time of the offending justified suppression of his name and identifying details and outweighed the public's interest in knowing his identity.

17. Mr Corlett described Mr Gainfort's personal circumstances and the impact they had on him and his family. Mr Corlett submitted that because of the matters going on in his life at the time, Mr Gainfort was under significant pressure, and this had had an impact on his health.

18. Mr Corlett submitted that if a non-publication order was not granted, Mr Gainfort's business would suffer reputational damage and harm that was out of proportion to offending and Mr Gainfort's prior clear disciplinary history. Publication would also impact Mr Gainfort and his family financially and could impact of his company's employees. Finally, publication would also result in further stress and health issues for Mr Gainfort and his wife.

19. Mr Corlett referred to previous cases where suppression orders had been granted by the Board. He submitted that the Board had granted names suppression on the basis of both personal circumstance and, in one case, acceptance of responsibility, remorse, cooperation, and a lack of any previous disciplinary offence. Mr Corlett submitted that all of those considerations existed in Mr Gainfort's case and that an order of name suppression was therefore justified.

20. In response to Mr Gainfort's application for name suppression, Ms Sutton submitted that the investigator opposed name suppression in this case. She submitted that the grounds put forward by Mr Gainfort did not displace the presumption of open justice. She submitted that reputational damage was a normal consequence of disciplinary offending and Mr Gainfort had not provided any evidence to show that publication would have a materially adverse effect on his business or reputation as he claimed.

21. While accepting that Mr Gainfort's offending in this case may have been a one-off, Ms Sutton submitted it had still been serious.

Decision on penalty

22. When it comes to imposing penalties in disciplinary cases, the Board's primary considerations are the need to protect the health and safety of the public and maintain industry standards. Any disciplinary penalty should aim to ensure the competency of a practitioner by holding them to account for their offending, assist with their rehabilitation, and deter them and other practitioners from disciplinary offending.

23. The Board considered Mr Gainfort's conduct was moderately serious, but at the higher end of that scale. The Board considered that Mr Gainfort had failed in his responsibilities as a supervisor, and this had allowed defective work to be carried out unchecked. There was the potential for serious consequences if the defects had not been found and corrected.

24. The Board accepted that there were no aggravating factors personal to Mr Gainfort in this case and that there were a number of mitigating factors in his favour. They included his early guilty plea, cooperation and acceptance of responsibility, and his lack of previous disciplinary offending. In addition, Mr Gainfort was remorseful and had proactively taken steps to ensure there would be no repeat of his behaviour. The Board also acknowledged Mr Gainfort's personal circumstances at the time and accepted his claim that his conduct in this case had been out of character for him.

25. The Board considered a fine was appropriate and determined that a starting point should be $4,500. Recognising the mitigating factors, the Board reduced the fine to $3,150.

26. The Board considered whether Mr Gainfort should be required to undertake training on supervision. However, recognising that the Board's Continuing Professional Development programme had covered the requirements of supervision in 2016, 2022 and again in 2023, the Board declined to make a training order in this case.

Costs

27. Section 107 of the Act provides that, in addition to any penalty imposed, the Board may order a registered person to pay a reasonable sum towards the costs and expenses incidental to the investigation of the complaint, prosecution, and hearing. The Board was provided with a schedule of estimated costs for the investigations, prosecution and hearing amounting to $10,297.70.

28. The Board accepted that Mr Gainfort's guilty plea had avoided the costs of a full hearing and he was entitled to recognition of this in terms of his contribution towards costs. The Board ordered him to pay $4,000 which was around 40% of the total costs.

Name suppression

29. The Board accepted the investigator's submission that some reputation damage was a normal consequence of committing a disciplinary offence. While understanding of Mr Gainfort's concerns about the impact of publication on his reputation and his family, the Board concluded that he had met the threshold required to depart from the starting point of open justice. Mr Gainfort's application for name suppression was declined.

Publication

30. Any publication of the Board's decision will be made at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

31. Being satisfied that Mr Gainfort was guilty of disciplinary offences under sections 89(c), 89(f) and 89(a)(i) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Gainfort pays a fine of $3,150.

    b. Pursuant to section 107 of the Act, Mr Gainfort pays $4,000 towards the costs of the investigation, prosecution, and hearing.

Appeal

32. If Mr Gainfort is dissatisfied with the whole or any part of this decision or these orders, 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 21 September 2023

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board

AGREED SUMMARY OF FACTS

In the matter of a disciplinary hearing in respect of GRANT KEVIN GAINFORT
Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1 The registered person, Grant Kevin Gainfort, is a registered and licensed certifying gasfitter, (registration number [redacted]) employed by Complete Gas Services. He also holds an exemption for sanitary plumbing under supervision.

2 Nicholas Robert Gwynne is a registered and licensed certifying plumber and certifying gasfitter (registration number [redacted]).

3 At all material times, Mr Gwynne was a tradesman plumber and tradesman gasfitter under the supervision of Mr Gainfort (for gasfitting).

4 Alan Nicholson is a registered and licensed certifying plumber and certifying gasfitter. Mr Nicholson also holds a limited certificate as a trainee drainlayer.

5 Mr Nicholson was contacted about work carried out by Mr Gwynne and Mr Gainfort by a concerned (**tradesperson**). Mr Nicholson was provided with a number of photographs of the work and a gas certificate. The work involved the installation of natural gas Rinnai Energy Saver 1005FT gas heater (**energy saver heater**) at a residential property at 41 Arthur Street, Tokoroa (**property**). The property is owned by Bruce Dowdle.

6 On 23 September 2021, Mr Nicholson made a formal written complaint to the Plumbers, Gasfitters, and Drainlayers Board (**Board**) about the gasfitting work carried out by Mr Gwynne and Mr Gainfort at the property.

7 On 21 October 2021, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Wayne Radovich to investigate the complaint.

8 Samuel Wood is a registered and licensed certifying plumber and certifying gasfitter. He was employed by the Board as a senior technical advisor. On 9 February 2022, Mr Wood completed a technical assessment based on all the available information at the time.

FACTS OF THE CASE

9 On or about 17 June 2020, Mr Gwynne attended the property to carry out gasfitting work. The gasfitting work involved disconnecting a Vulcan wall furnace, replacing it with the energy saver heater (a new natural gas Rinnai Energy Saver 1005FT gas heater), connecting the

energy saver heater to the gas line and installation of the flue to the energy saver heater (**gasfitting work**).

10 At the time of the installation, Mr Gwynne was a tradesman gasfitter under the supervision of Mr Gainfort. Mr Gainfort was required to ensure Mr Gwynne had adequate supervision while he was carrying out gasfitting work. Mr Gwynne was unable to certify the gasfitting work he carried out, as he was not a certifying gasfitter.

11 On 17 June 2020, following completion of the gas installation, a gasfitting Certificate of Compliance (**COC**) was issued. The certificate named Mr Gainfort as the certifier, and Mr Gwynne as the tradesperson who carried out the work under supervision. Mr Gainfort did not visit the property at any point to physically inspect or test the gasfitting work himself. He relied solely on photographs from Mr Gwynne, which did not show the flue set-up, and confirmation from Mr Gwynne that the gas line had been tested in issuing the COC.

12 The COC certified that:

(a) the risk classification of the gasfitting work undertaken was classified as "low-risk";

(b) the gasfitting work had been carried out in accordance with the mandatory gas installation standards in sections 3 to 6 of AS/NZS 5601.1;

(c) all parts of the installation are safe to connect to the gas supply;

(d) the gasfitting work had been done lawfully and safely, and that the information in the COC was correct.

13 No Gas Safety Certificate (**GSC**) was issued following the installation.

14 Following completion of the work, the homeowner noticed a "shuddering" sound coming from the energy saver heater when in use and engaged another tradesperson to visit the property to check the installation.

15 The tradesperson visited the property and identified issues with the flue. The work was subsequently remediated by the tradesperson.

16 Mr Nicholson was made aware of the work Mr Gwynne had carried out by the tradesperson. The tradesperson did not wish to be named, but was sufficiently concerned about the work to contact Mr Nicholson. Mr Nicholson subsequently made a complaint to the Board on 23 September 2021.

FAILURE TO COMPLY WITH TERM OR CONDITION OF LICENCE OR REGISTRATION

17 Mr Gainfort, as a certifying gasfitter, was subject to the following terms or conditions under the Plumbers, Gasfitters, Drainlayers Board (Gasfitting Registration and Licensing) Notice 2016 (**Gasfitting Notice**). In particular, Mr Gainfort was required to:

(a) ensure that all persons under his supervision are competent to perform the tasks undertaken (clause 8(9)(a)); and/or

(b) ensure that all persons under his supervision are adequately supervised while carrying out gasfitting (clause 8(9)(b)); and/or

(c) ensure that all persons under his supervision comply with all relevant regulations (clause 8(9)(c)).

18 At the time Mr Gwynne carried out the gasfitting work at the property, he was a tradesman gasfitter under Mr Gainfort's supervision. On 26 August 2020, Mr Gwynne became a Certifying Gasfitter and Plumber.

19 Mr Gainfort did not take any steps to ensure that Mr Gwynne was competent to carry out the gasfitting work at the property. In terms of his supervision, he did not personally visit the property to view the work or carry out testing of the gasfitting work. Mr Gainfort relied on photographs of the installed energy saver heater from Mr Gwynne, and confirmation provided by Mr Gwynne that the gas line had been tested, in order to satisfy himself that the work was compliant and that the COC could be issued. As addressed further below, there were also various compliance issues with the work.

ISSUING A FALSE OR MISLEADING RETURN

20 A COC is a return required under regulation 46 of the GSMR, an enactment relating to gasfitting which was in force at the time the gasfitting work was carried out.

21 Paragraphs 11 and 12 above are repeated.

22 The COC issued was false and/or misleading because:

(a) The gasfitting work was an alteration to an existing installation, and was therefore "high-risk gasfitting" under regulation 5A(2)(a) of the GSMR; and/or

(b) There were several issues with the gasfitting work carried out by Mr Gwynne which mean that the work did not comply with the mandatory gas installation standards in AS/NZS 5601.1 and the GSMR. In particular:

Incorrect flue material

(i) A 65mm uPVC pipe was used for the fresh air intake. This was too short so a 40mm uPVC wastepipe was used to extend the flue. This is contrary to clause 2.3.1(c) of the AS/NZS 5601.1 which requires that the materials used are suitable for the environment they are installed in. In order to meet these requirements, clause 4.7.5 of the AS/NZS5601.1 states that materials shall

comply with Table 4.2. Table 4.2 only allows the use of uPVC for low temperature flues not exceeding 60°C.

(ii) The manufacturer does not have specific details of the maximum flue temperature for the energy saver heater. However, the manufacturer has provided evidence of testing that they have carried out, which shows that when the ambient temperature of the energy saver is at 28.6°C, the outer flue temperature measured 89.3°C. Therefore, uPVC has the potential to melt and disrupt the proper functioning of the heater or catch fire.

(iii) This issue also meant that the gas installation was unsafe, contrary to regulation 9 of the GSMR.

Unsealed flue vented to the wall cavity

(iv) The flue was not sealed to the wall cavity and as a result, products of combustion were entering the wall cavity. This is contrary to AS/NZS5601.1 clause 2.5.7 which states that flue terminals shall be located to minimise entry of combustion products into any building and to minimise the effects of adverse draught on performance of the gas appliance. It also states that flue terminals shall be located to prevent harm to persons. In order to meet this requirement, clause 3.8.4 states that flue joints shall seal adequately with a sealing agent used if necessary.

Work was not completed in line with manufacturer's written instructions

(v) Clause 2.6.2 of the AS/NZS5601.1 requires that gas appliances and equipment are installed in accordance with the manufacturer's written instructions. Mr Gwynne did not follow the manufacturer's instructions when installing the energy saver heater. Namely:

(A) components other than energy saver heater components were used, such as the uPVC pipe;

(B) the flue did not terminate in accordance with AS/NZS5601.1:2013 as it was not adequately sealed, and therefore discharged into the wall cavity;

(C) the flue terminal was not positioned away from flammable materials—uPVC is considered a flammable material and was used as part of the flue;

(D) there was not a 25mm clearance from the combustible materials—uPVC is combustible and was use as part of the flue.

BREACH OF ENACTMENT RELATING TO GASFITTING (FAILURE TO RECORD HIGH RISK WORK)

23 Mr Gainfort issued a COC for the gasfitting work carried out at the property. The gasfitting work was an alteration to an existing installation and was therefore "high-risk gasfitting" under s 5A(2)(a) of the GSMR.

24 Regulation 52H of the GSMR requires the details of high-risk gasfitting work to be recorded on WorkSafe's Electricity and Gas High-Risk database (**EGHR Database**):

(a) by the person who issued the COC; and

(b) within 20 working days after the date of issue.

25 By certifying the gasfitting work carried out by Mr Gwynne was safe and compliant in the COC, Mr Gainfort carried out gasfitting.

26 The COC issued by Mr Gainfort did not specify that the work undertaken was "high-risk" as required, and Mr Gainfort did not record the details of the high-risk gasfitting work carried out, on the EGHR Database as required, in breach of regulation 52H.

COMMENTS OF MR GAINFORT

27 Mr Gainfort stated that the information contained in the COC template was completed by Mr Gwynne and signed off by him. He confirmed that the gasfitting work undertaken at the property is what has been outlined above, that Mr Gwynne was responsible for carrying out the gasfitting work at the property, and that he was Mr Gwynne's supervisor at the time.

28 Mr Gainfort stated that he did not see photos of the way in which the flue was installed upon initial completion of the gasfitting work, but that he did see photos of the flue once the energy saver heater was removed. Mr Gainfort accepted that that the flue was too short, so a 40mm uPVC waste pipe was used to extend the flue, and that the flue was not sealed to the wall cavity which meant products of combustion were entering the wall cavity. He further stated that he "[could] not explain why the 40mm waste pipe was used and was not made aware of the flue being too short". He stated that the "job should have been stopped and [the] correct flue kit ordered and installed as per the manufacturer's instructions".

29 Mr Gainfort stated that Mr Gwynne was a tradesman gasfitter who had passed his certifying gasfitter exam, however Mr Gwynne was "short on some hours due to registration issues". He further stated that because of this, he trusted what Mr Gwynne had done on-site. He stated that, in this instance, he had been let down and that he takes responsibility of what had happened as the certifying gasfitter for this job.

30 Mr Gainfort stated that he is deeply regretful that this has happened and that had Mr Gwynne come to him with concerns or questions regarding the installation, he would have been happy to help and guide Mr Gwynne and make him aware that the work was not correct or safe.

Mr Gainfort also stated that he was sincerely sorry to the owners of the property for distressed caused.

Date: 14 June 2023

[redacted]
G Gainfort
Registered person

[redacted]
J An Roy
Counsel for the investigator