Plumbers, Gasfitters and Drainlayers Board

PIDGEON v BRUCE

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/11)

Summary

Andrew Donald Bruce, Tradesman Plumber, was charged with a representative charge of carrying out drainlaying in a manner contrary to an enactment. The charge related to drainlaying work carried out at 11 properties in the Queenstown region.

Mr Bruce pleaded guilty to the charge.

The Board considered Mr Bruce's conduct was moderately serious, but at the lower end of that scale. The Board accepted there were no aggravating factors in the case and that Mr Bruce was entitled to credit for pleading guilty, been cooperative throughout the process, having no previous disciplinary offending, and being remorseful.

The Board ordered Mr Bruce to pay a fine of $2,100 and pay $2,900 towards costs.

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

BETWEEN **MICHAEL PIDGEON**

Investigator

AND **ANDREW DONALD BRUCE**
Tradesman Plumber, of Luggate

Registered Person

DECISION OF THE BOARD
26 October 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 Alice Sanders for Mr Bruce
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 [redacted] against Andrew Bruce, Tradesman Plumber. The complaint related to drainlaying work carried out by Mr Bruce at 11 properties in the Queenstown region.

Guilty plea

2. On 15 June 2023, Mr Bruce pleaded guilty to a representative charge of carrying out drainlaying in a manner contrary to an enactment and 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 Bruce had committed a disciplinary offence under section 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 Bruce's conduct in this case was moderately serious. She submitted that the purpose of a licensing regime was to protect public health and safety by ensuring that work is only carried out by licensed people. Mr Bruce was a registered and licensed plumber and was therefore aware of both the restricted nature of the work he was doing and the need to be licensed in order to carry it out. Despite this, he carried out drainlaying work while unlicensed at 11 properties.

6. Ms Sutton recognised that Mr Bruce had previously held a limited certificate as a trainee drainlayer. However, she submitted that he was still relatively inexperienced and while there were no known defects with the work he had done, his lack of experience had increased the risk that there could be defects.

7. Ms Sutton referred the Board to its previous decisions in the cases of *Radovich v Pauro* (2020/23), *Thomas v Mason* (2019/06) and *Winstanley v Goundar* (2018.18). In the *Pauro* case, Mr Pauro, pleaded guilty to charges of unauthorised sanitary plumbing and drainlaying work over a 14-month period. There were no compliance issues with any of his work and the Board adopted a starting point of $3,000 for the fine in his case. In the *Mason* case, Mr Mason pleaded guilty to carrying out sanitary

plumbing when he did not hold a current practising licence. The Board adopted a starting point of $2,500 in that case. Finally, in the *Goundar* case, a final fine of $1,500 was imposed on Mr Goundar after he pleaded guilty to carrying out sanitary plumbing without a current licence.

8. Ms Sutton submitted that Mr Bruce's conduct was similar to all of the cases, but had the most in common with Mr Pauro's case as he had also been a plumber who had carried out drainlaying work. Both Mr Pauro and Mr Bruce had carried out unauthorised work over an extended period of time, involving multiple properties. As in Mr Pauro's case, there had been no defects with the drainlaying work Mr Bruce had carried out.

9. Ms Sutton submitted that the appropriate penalty in this case was a fine with a starting point in the range of $3,000 - $3,500. Ms Sutton submitted the investigator was not aware of any aggravating factors in this case, and Mr Bruce was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending.

10. Ms Sutton submitted that the Board could require Mr Bruce to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that the usual starting point for an order of costs was half of the actual costs. Given Mr Bruce's guilty plea and cooperation had helped to keep the costs down, Ms Sutton submitted that the Board may wish to consider a reduction from the starting point.

11. On behalf of Mr Bruce, Ms Sanders submitted that Mr Bruce had taken all reasonable steps to tell his employer that he was not a registered drainlayer and that his employer would have to apply for a limited certificate for him to carry out drainlaying. She submitted that Mr Bruce also told his employer his work would have to be certified by a registered drainlayer. Ms Sander's submitted that Mr Bruce's employer assured him that this had been done.

12. Ms Sanders submitted that Mr Bruce's previous employer had applied for his limited certificate in the past and he was therefore not sent reminders when his certificate had expired. She submitted that it was Mr Bruce's employer's responsibility to apply for his new limited certificate.

13. Ms Sanders submitted that Mr Bruce had completed his application for registration and supplied it to his employer for review and submission. Mr Bruce had not been aware that his employer had not submitted it to the Board.

14. Ms Sanders submitted that as soon as Mr Bruce became aware that he did not hold a current limited certificate to do drainlaying, he refused to carry out any further drainlaying work. He also made enquiries about the status of his registration application and, on finding it had not been submitted, took it back and submitted it

himself. Ms Sanders noted that his application had since been processed and Mr Bruce was now a registered drainlayer.

15. Ms Sanders submitted that the facts in the case of Mr Pauro were distinguishable from the present case. She submitted that Mr Pauro had been operating his own business when he carried out his work without a licence and was therefore aware that he was not allowed to do the work. By comparison, Ms Sanders submitted that Mr Bruce was employed and had notified his employer that they would need to apply for a limited certificate for him to do drainlaying work. She submitted that Mr Bruce had done everything that he could reasonably be expected to do in the circumstances.

16. Ms Sanders submitted that Mr Bruce's conduct in this case was of low seriousness rather than moderate as submitted by the investigator. She submitted that a fine with a starting point in the vicinity of $1,000 - $1,500 was therefore appropriate.

17. Ms Sanders submitted that there were a number of mitigating factors in Mr Bruce's favour including the actions he had taken to alert his employer of the need to apply for a limited certificate for him, his refusal to carry out any further drainlaying once he learnt he did not hold a limited certificate, the fast-tracking of his application to get registered as a drainlayer, the absence of any known defects with his work, his early guilty plea and cooperation, and his lack of any previous disciplinary history.

18. In relation to costs, Ms Sanders submitted that they were a matter for the Board to decide. However, she drew the Board's attention to the mitigating factors in Mr Bruce's case and submitted that any award of costs should reflect Mr Bruce's ongoing cooperation with the investigation.

19. Mr Bruce sought an order of non-publication suppressing his name. Mr Bruce submitted that he had taken all reasonable steps to comply with his obligations including outlining to his employer what he needed to do in order for Mr Bruce to obtain an authorisation to do drainlaying work. He submitted he had verbal confirmation from his employer that he would apply for a limited certificate for him and there was a certifying drainlayer available to sign off his work. Mr Bruce submitted that he had carried out the drainlaying work on that understanding. Mr Bruce submitted he had stopped doing any drainlaying as soon as he was made aware that he did not have an authorisation and had declined to do any further work since then. Mr Bruce had gone on to become registered as a tradesman drainlayer. Mr Bruce submitted that, in the circumstances, publication of his name would have long term implications on his ability to obtain employment and start his own business in the future.

20. In response to Mr Bruce's application for name suppression, Ms Sutton submitted that the default position was one of open justice under section 113 of the Act.

However, she acknowledged that section 113 allowed the Board to grant non-publication orders when it was of the opinion that it was proper to do so having regard to the interests of any person and the public interest.

21. Ms Sutton submitted that the investigator opposed Mr Bruce's application for name suppression. While acknowledging Mr Bruce's account that there appeared to be a misunderstanding between himself and his employer about his authorisation, Ms Sutton submitted that ultimately it is the practitioner's responsibility to ensure they are appropriate authorised before carrying out any work. Ms Sutton submitted that Mr Bruce had not put forward any evidence to support his claim that publication would have a materially adverse impact on his ability to gain employment or start his own business. Finally, Ms Sutton submitted Mr Bruce's conduct was not a one-off incident but representing unauthorised work over a 17-month period.

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 Bruce's conduct in this case was moderately serious, but at the lower end of that scale. The Board was concerned that Mr Bruce did not appear to properly understand his obligations in relation to holding a current licence or authorisation. As a registered plumber, the Board considered that Mr Bruce should have understood that he was personally responsible for ensuring he had the correct authorisation to allow him to carry out drainlaying. Even in circumstances where it may be the employer's practice to obtain licences or authorisations on behalf of staff, Mr Bruce was still personally responsible for ensuring this had happened before he undertook any drainlaying work. In this case Mr Bruce had failed to ensure he was correctly authorised to do drainlaying for 17 months over two separate licensing years. In the circumstances, the Board did not accept he had taken all reasonable steps to ensure he was authorised.

24. The Board accepted that there were no aggravating factors personal to Mr Bruce and that his early guilty plea, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour. The Board also accepted that Mr Bruce was remorseful and had since gone on to register as a tradesman drainlayer.

25. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $3,000. Recognising the mitigating factors, the Board reduced the fine to $2,100.

Costs

26. 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 $7,314.68.

27. The Board accepted that Mr Bruce's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $2,900 towards costs which was around 40% of the total costs.

Name suppression

28. While acknowledging Mr Bruce's concerns about the possible impact of publication on his future work prospects, the Board concluded that Mr Bruce's concerns were speculative and were not sufficient to warrant an order of non-publication in this case.

Publication

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

Board orders

30. Being satisfied that Mr Bruce was guilty of a disciplinary offence under section 89(a)(ii) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Bruce pays a fine of $2,100.

    b. Pursuant to section 107 of the Act, Mr Bruce pays $2,900 towards the costs of the investigation, prosecution, and hearing.

Appeal

31. If Mr Bruce 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 26 October 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 ANDREW DONALD BRUCE
Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1 The registered person, Andrew Donald Bruce, is a registered and licensed tradesman plumber (registration number [redacted]).

2 Mr Bruce was and is employed by Eco Plumbing and Gas Limited (**Eco**). [redacted] is the sole director of Eco and is Mr Bruce's employer. He is also Mr Bruce's supervisor for sanitary plumbing work.

3 Mr Bruce is a registered and licensed tradesman plumber. Between April 2021 and September 2022, Mr Bruce was not authorised to do drainlaying work. Mr Bruce was previously authorised to do this work. Between 1 May 2019 and 3 March 2021, Mr Bruce held a limited certificate as a trainee drainlayer under the supervision of [redacted]

4 Between April 2021 and September 2022, Eco completed drainlaying work at several new-build houses throughout the Queenstown Lakes District, as addressed below.

5 In May 2022, the Plumbers, Gasfitters, and Drainlayers Board (**Board**) received two separate, confidential 'Report a Cowboy' reports raising concerns about unauthorised drainlaying work carried out by Eco at these properties.

6 On 13 July 2022, [redacted] the Board's Operations Manager, submitted a written complaint about Eco.

7 On 2 February 2023, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Michael Pidgeon to investigate the complainant against Mr Bruce.

8 [redacted] is a registered and licensed certifying plumber and gasfitter. He was employed by the Board as a Senior Technical Advisor. [redacted] provided a technical assessment of the drainlaying work done at the properties based on all of the information and documentation available to him.

FACTS OF THE CASE

9 Between 20 April 2021 and 6 September 2022, Eco completed drainlaying and sanitary plumbing work at several new-build houses throughout the Queenstown Lakes District. Eco undertook this work at the following addresses (**the properties**):

(a) 14 Jackson Rise (property 1);

(b) 23 Kereru Crescent (property 2);

(c) 420 Domain Road (property 3);

(d) 14 Bonspiel Road (property 4);

(e) 14 Deans Drive (property 5);

(f) 7 Pearce Place (property 6);

(g) 7 Campbell Road (property 7);

(h) 9 Campbell Road (property 8);

(i) 111 Meadow Stone Drive (property 9);

(j) 134 Beacon Point Road (property 10);

(k) 38b Farrant Drive (property 11).

10 Mr Bruce carried out the relevant drainlaying work, which involved:

(a) The installation of stormwater and sewer drains;

(b) The installation of catchpits; and

(c) The installation of drainage sumps.

11 This work was later inspected and signed off by the Queenstown Lake District Council (**Council**).

12 Enquiries were subsequently completed for the properties on the Council's database. No drainlayer details or registration numbers were recorded for the external drainlaying and/or underslab plumbing and drainage reports for the properties. [redacted] was listed as the attending practitioner for all of the properties, except for property 6, where 'Andrew from Eco Plumbing' was listed. Mr Bruce was not aware he had been listed as the attending practitioner for property 6. Mr Bruce did not hold himself out to be certified, nor did he sign off or submit any paperwork to the Council to ensure he complied with his limited certificate.

13 [redacted] reviewed the information available and confirmed the work undertaken involved drainlaying. He did not review the work in person. However, from the information available to him, he did not identify any compliance issues with the work which Mr Bruce had undertaken at the properties.

DRAINLAYING CONTRARY TO AN ENACTMENT

14 Only persons who are authorised to do drainlaying work under section 10 of the Plumbers, Gasfitters, and Drainlayers Act (**Act**) may do or assist with drainlaying work.

15 Over a 17-month period, between April 2021 and September 2022, Mr Bruce carried out drainlaying work at the properties. As noted, the work carried out at the properties involved drainlaying, as it involved the installation of stormwater and sewer drains, as well as catchpits and sumps.

16 Mr Bruce was not authorised to carry out drainlaying work during this period.

17 By carrying out drainlaying work at the properties, Mr Bruce breached section 10 of the Act, and thereby carried out drainlaying in breach of an enactment relating to drainlaying.

MR BRUCE'S COMMENTS

18 Mr Bruce accepted that he completed the drainlaying work at the properties, which included digging, pipe laying, and backfilling.

19 Mr Bruce said that he told his employer, Eco, at the beginning of his employment that he could not undertake drainlaying work. He said his previous employer had arranged for the limited certificate and someone had checked his work.

20 Mr Bruce said that Eco told him there was someone who could supervise and sign off the work. Mr Bruce relied on this and relied on Eco making the appropriate arrangements for a limited certificate like his previous employer had. As far as Mr Bruce was aware, Eco was managing the limited certificate process to ensure he was able to complete drainlaying work. He proceeded to complete the work as instructed and assumed this was being signed off, as it had been previously.

21 In regard to his licensing status, Mr Bruce stated he told [redacted] he was waiting on a "rescheduled factory tour to complete [his] national certificate". Mr Bruce explained that his factory tour was initially delayed due to the Covid-19 lockdowns and then an administrative error when he was re-scheduled to attend. Mr Bruce said he was able to complete the factory tour in February 2021 and in October 2022 he provided Eco with his paperwork to be submitted. He said that Eco failed to submit his paperwork.

22 Mr Bruce stated, "I didn't know I was unable to complete drainlaying works, but that is clearly a misunderstanding on my part and a breakdown in communication between [redacted] and I."

23 He further explained, "I do believe I act in a law abiding manner as a person, so this investigation is very distressing for me. I want to do everything I can to resolve this situation".

24 In June 2023, Mr Bruce stated that as a result of the Board's investigation, he requested the national documentation back from Eco and submitted this himself on 25 May 2023. Mr Bruce explained that he is aware that unless the necessary authority is in place, he is not able to complete drainlaying work at all. He says that if he had been aware that the certificate wasn't in place, he would never have completed any drainlaying work.

Date: June 2023

[redacted]

A Bruce

[redacted]

J Sutton

Counsel for investigator