Plumbers,
Gasfitters and
Drainlayers Board

PIDGEON v FINDLAY

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/12)

Summary

Hayden James Medland Findlay, Certifying Plumber, Certifying Gasfitter, was charged with a representative charge of employing, directing or permitting an unauthorised person to carry out drainlaying. The charge related to drainlaying work carried out by an employee of Mr Findlay's at 11 properties in the Queenstown region.

Mr Findlay pleaded guilty to the charge.

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

The Board ordered Mr Findlay to pay a fine of $3,150 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 **HAYDEN JAMES MEDLAND FINDLAY**
Certifying Plumber, Certifying Gasfitter, of Wanaka

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 Mr Findlay was self-represented
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 Hayden Findlay, Certifying Plumber, Certifying Gasfitter. The complaint related to drainlaying work carried out by [redacted] an employee of Mr Findlay's, at 11 properties.

Guilty plea

2. On 16 June 2023, Mr Findlay pleaded guilty to a representative charge of employing, directing, or permitting an unauthorised person to do drainlaying 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 Findlay had committed a disciplinary offence under section 89(g) 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 Findlay's conduct in this case was moderately serious given that it involved directing unauthorised work on 11 properties over a 17 month period. As [redacted] employer, Ms Sutton submitted that Mr Findlay was responsible for ensuring [redacted] was appropriately authorised before directing him to carry out any drainlaying work. Ms Sutton submitted that the scheme of the Act was designed to ensure that only authorised people carried out drainlaying work and, as a certifying practitioner himself, Mr Findlay should have understood the importance of this and had appropriate safeguards in place to ensure all of his staff were authorised.

6. Ms Sutton recognised that [redacted] had some training and knowledge in drainlaying work because he had been a trainee drainlayer. However, she distinguished [redacted] case from cases where registered drainlayers carried out drainlaying without a current practising licence. She submitted that [redacted] was still relatively inexperienced and required supervision and while there were no known defects with the work he had done, his lack of experience had increased the risk that there could have been.

7. Ms Sutton referred the Board to its previous decisions in the cases of *Radovich v Foster* (2020/15), *Costelloe v Su* (2020/34) and *Radovich v Perkins* (2022/3). In the *Foster* and *Su* cases, the practitioners pleaded guilty to charges of employing unauthorised people to carry out sanitary plumbing and gasfitting work respectively. In the *Foster* case, two registered but unlicensed plumbers carried out a number of plumbing jobs at a time when Mr Foster was aware they were unlicensed. In the *Su* case, a trainee gasfitter carried out a single job when his limited certificate had expired. In both cases the work carried out was without defects and the Board adopted a starting point for fines in both cases of $4,000. In the *Perkins* case, Mr Perkins pleaded guilty to charges of employing, directing or permitting unauthorised people to carry out drainlaying and carrying out drainlaying himself while unauthorised. In that case, the Board adopted a starting point for the fine of $4,500.

8. Ms Sutton submitted that Mr Findlay's case was comparable with all of the above cases. As in *Foster*, the unauthorised work involved a number of properties over an extended period of time, although in Mr Findlay's case only a single employee was involved. Ms Sutton submitted that Mr Findlay's case was also similar to the *Perkins* case given the extended period of time over which the unauthorised employee was permitted to work. As in *Perkins*, Ms Sutton submitted that Mr Findlay was aware of the need for his employees to be authorised.

9. Ms Sutton submitted that the appropriate penalty in this case was a fine with a starting point of $4,500. She submitted the investigator was not aware of any aggravating factors in this case, and Mr Findlay 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 Findlay 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 that Mr Findlay'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. Mr Findlay submitted that his offending in this case was minor as it was not done maliciously. He submitted it was a clerical error in relation to paperwork and did not affect the competency of the work [redacted] had carried out at the various properties. Mr Findlay submitted that [redacted] training had been affected by the COVID-19 pandemic which had impacted on his ability to complete his drainlaying apprenticeship. All that had remained for [redacted] to do was a factory walk-through and Mr Findlay submitted that this was not a critical requirement in relation to his capability as a drainlayer.

12. Mr Findlay submitted that he had now ensured that [redacted] had completed his paperwork and was a registered drainlayer. Mr Findlay submitted that he had also since signed up to complete a drainlaying apprenticeship himself as he had been

unable to complete the certifying plumber to certifying drainlayer pathway. He submitted that the company had also employed a local certifying drainlayer to supervise all of their work.

13. Mr Findlay submitted that the company had introduced a training register which had to be completed by all staff a month before their licences were due to expire and any new employees before they started working. He submitted that the company had also introduced a practice of not paying staff until they had completed all licensing and continuing professional development requirements. Finally, he submitted the company had hired an administration officer and part of their role was to track all employees' requirements.

14. Mr Findlay submitted that a substantial fine would be hard on the company. He submitted that things had been tough for the past two years as a result of the pandemic and the company had had to invest a significant amount of money to keep the business going through challenging patches. He submitted that the business was slowly making its way back but was still facing challenges. He submitted that the company would also be paying [redacted] fine and investigation costs as well.

15. Mr Findlay sought orders from the Board suppressing details of his identity. He submitted that they lived in a small town and his business would be seriously affected if its name was discredited. He submitted the business prided itself on doing quality work and going over and above what was expected for customers. Mr Findlay submitted that name suppression would also protect the reputation of his staff and prevent existing customers from thinking they may have had substandard work done at their properties.

16. Mr Findlay submitted that the failure to ensure [redacted] was authorised had been a mistake and had arisen from difficulties with getting a supervisor for him. He also described being stressed and under pressure at the time both in a professional and personal capacity. Mr Findlay submitted that he found it difficult to admit that he had failed to ensure [redacted] was authorised because it meant he had not been doing his job to the best of his abilities and this went against what he stood for as a person and a business owner. Mr Findlay submitted that having good values and providing customers with the best job possible were very important to him. He submitted that having finally started to recover from the past few years, he did not want to see his business' reputation damaged as a result of this matter.

17. In response to Mr Findlay's application for name suppression, Ms Sutton referred the Board to the principles that applied when considering issues of name suppression. She submitted that the default position was the principle of open justice under section 113 of the Act with the Board ordering non-publication only when it was of the opinion that it was proper to do so having regard to the interests of any person and the public.

18. Ms Sutton submitted that the investigator was opposed to Mr Findlay's application for name suppression as the grounds he relied on did not provide a sufficient basis to displace the presumption of open justice. Referring to Mr Findlay's reasons for seeking name suppression, she submitted that he had not provided any specific evidence to support his claims of any adverse impacts from publication. She submitted that Mr Findlay was simply making a general claim of concern about possible impacts on his business. Ms Sutton also submitted that Mr Findlay's characterisation of his offending in this case as minor and due to a simple clerical error did not accurately reflect the fact that [redacted] had been unauthorised for 17 months and had worked on 11 properties over that period of time. For these reasons, Ms Sutton submitted that Mr Findlay's application for name suppression should be declined.

Decision on penalty

19. 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.

20. The Board considered Mr Findlay's conduct in this case was moderately serious. The Board noted that the period [redacted] had been unauthorised crossed licensing years and this should have alerted Mr Findlay to [redacted] need to renew his authorisation. In addition, despite Mr Findlay being aware that he did not have a supervisor for his drainlaying work, he had directed [redacted] to carry out a number of drainlaying jobs over the 17 months.

21. The Board accepted that there were no aggravating factors personal to Mr Findlay 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 Findlay was remorseful.

22. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $4,500. Recognising the mitigating factors, the Board reduced the fine to $3,150

Costs

23. 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 investigation, prosecution and hearing amounting to $7,361.08.

24. The Board accepted that Mr Findlay'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

25. In considering Mr Findlay's application for name suppression, the Board began by recognising the importance of the right of the public to know about practitioners who have committed disciplinary offences. This is expressly recognised in section 74(1)(c)(viii) of the Act which requires the public register of plumbers, gasfitters, and drainlayers to contain information about any disciplinary action taken against a practitioner in the past three years. However, accepting that it did have the power to make non-publication orders under section 113(3)(b) of the Act, the Board considered whether it was proper to do so in this case having regard to Mr Findlay's interests and the public's right to know.

26. Mr Findlay's reasons for seeking an order of non-publication related to his view that his offending had been a simple clerical error and minor, and that publication would damage his professional reputation and have an adverse impact on his business, staff and customers. The Board accepted the investigator's submission that Mr Findlay's concerns were speculative and not based on any evidence he had provided. The Board also considered that any impact of Mr Findlay's reputation and business was an ordinary consequence of committing a disciplinary offence and, as such, did not outweigh the public's interest to know.

27. Mr Findlay's application for name suppression was declined.

Publication

28. The Board ordered that any publication of the Board's decision will be made at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

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

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

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

Appeal

30. If Mr Findlay 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 HAYDEN JAMES MEDLAND FINDLAY
Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1 The registered person, Hayden James Medland Findlay, is a registered and licensed certifying plumber and certifying gasfitter (registration number [redacted]). He is not authorised to do drainlaying work.

2 Mr Findlay is the sole director of Eco Plumbing and Gas Limited (**Eco**).

3 [redacted] was and is an employee of Eco. [redacted] is a registered and licensed tradesman plumber. At the relevant times (between April 2021 and September 2022), [redacted] was not authorised to do drainlaying work. Between 1 May 2019 and 3 March 2021. [redacted] 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.

5 In May 2022, the Plumbers, Gasfitters, and Drainlayers Board (**Board**) received two separate confidential "Report a Cowboy" reports raising concerns about Eco carrying out unauthorised drainlaying work at various properties (detailed below).

6 On 13 July 2022, [redacted] the Board's Operations Manager, submitted a written complaint about drainlaying work undertaken at these properties.

7 On 20 July 2022, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Michael Pidgeon to investigate the complaint against Mr Findlay.

8 [redacted] is a registered and licensed certifying plumber and certifying gasfitter. He was previously employed by the Board as a Senior Technical Advisor. [redacted] provided a technical assessment of the work carried out at the relevant 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 The drainlaying work was completed by [redacted]. This was under the direction and/or with the permission of Mr Findlay.

11 The drainlaying work undertaken involved:

(a) the installation of stormwater and sewer drains;

(b) the installation of catchpits; and/or

(c) the installation of drainage sumps.

12 The drainlaying work at the properties was subsequently inspected and signed off by the Queenstown Lake District Council (**Council**).

13 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. Mr Findlay was listed as the attending practitioner for all of the properties, except for property 6, where [redacted] from Eco Plumbing' was listed.

14 For the inspection of property 4, Mr Findlay was listed as a 'certifying plumber and drainlayer' on the relevant documentation. For the inspection of property 11, Mr Findlay was listed as a 'plumber, drainlayer'.

15 Confidential reports were made to the Board about the work done at the properties. Following this, [redacted] submitted a written complaint to the Board.

16 [redacted] undertook a technical review of the work, and confirmed it involved drainlaying. [redacted] did not review the work in person. However, from the information available to him, he did not identify any compliance issues with the work [redacted] carried out at the properties.

EMPLOYING, DIRECTING OR PERMITTING AN UNAUTHORISED PERSON TO DO DRAINLAYING WORK

17 The work [redacted] carried out at the properties involved drainlaying, as it involved the installation of stormwater and sewer drains, as well as catchpits and sumps.

18 [redacted] was not authorised to do or assist with drainlaying work, as required under section 10 of the Plumbers, Gasfitters, and Drainlayers Act 2006, when he completed the work at the properties over the relevant 17-month period.

19 Mr Findlay employed [redacted] at the time, and directed and/or permitted [redacted] to do the work.

MR FINDLAY'S COMMENTS

20 Mr Findlay stated that, between 6 April 2021 and 6 September 2022, Eco completed drainlaying and sanitary plumbing for the properties. He accepted [redacted] had done drainlaying work.

21 Mr Findlay stated that, after receiving correspondence from the Board, he spoke to [redacted] about his drainlaying licence. [redacted] told him he was unlicensed when he completed the drainlaying work at the properties and he had not submitted his registration due to having "ongoing issues with skills".

22 Mr Findlay acknowledged that he should have been more proactive in checking the status of [redacted] licence. Mr Findlay said he had assumed that [redacted] had resolved his licensing issues.

23 Mr Findlay further stated that the work at the properties had been completed to code, however, he understood it was not an ideal situation.

Date: June 2023

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H Findlay



Counsel for investigator