Plumbers,
Gasfitters and
Drainlayers Board

PIDGEON v O'FLAHERTY

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/17)

Summary

Paul Gerard O'Flaherty, Certifying Plumber, was charged with employing, directing, or permitting unauthorised persons to carry out sanitary plumbing. The charge related to the repair of a leaking pipe in a shared driveway at properties in Upper Hutt.

Mr O'Flaherty pleaded guilty to the charge.

The Board considered Mr O'Flaherty's conduct was low to moderate in terms of seriousness. The Board recognised that Mr O'Flaherty's previous disciplinary convictions were an aggravating factor in this case, but this was balanced by his guilty plea and acceptance of responsibility, and the steps he had subsequently taken to get his apprentice properly authorised.

The Board ordered Mr O'Flaherty to pay a fine of $4,000 and pay $5,900 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 **PAUL GEREARD O'FLAHERTY**
Certifying Plumber, of Upper Hutt

Registered Person

DECISION OF THE BOARD
11 DECEMBER 2023

Hearing:	Held in Wellington on 19 October 2023
Members sitting:	Martin de Gouw (Deputy Chair), Barry Willcox, James Smith, Beth Healy, Ming-chun Wu
Counsel:	Jessika Tuhenga for the investigator Kay Laracy for Mr O'Flaherty
Legal advisor:	Sarah Leslie

Disciplinary hearing

1. On 19 October 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Sergio Kemelmager against Paul Gerard O'Flaherty, Certifying Plumber. The complaint related to sanitary plumbing work carried out by employees of Mr O'Flaherty's on a shared driveway at a property in Upper Hutt.

Guilty plea

2. On 14 August 2023, Mr O'Flaherty pleaded guilty to a charge of employing, directing, or permitting unauthorised people to carry out sanitary plumbing work and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr O'Flaherty is a registered and licensed certifying plumber. He is also the sole director of Ultimate Drain Clearing Limited (**Ultimate**).

    b. On 22 January 2022, at the direction of Mr O'Flaherty, two employees of Ultimate repaired a leaking water pipe located in a driveway shared by six residential units at 48 and 50 Whitemans Road, Silverstream, Upper Hutt (**properties**). Ultimate had been engaged by the owner of one of the residences at the properties.

    c. The work carried out at the property was:
        i. cutting the layer of asphalt above the leaking pipe
        ii. replacing the damaged section of pipe
        iii. covering the pipe in sand
        iv. backfilling the hole
        v. compacting the base course
        vi. relaying asphalt over the top.

    d. The work was sanitary plumbing and could only be carried out by those authorised to do sanitary plumbing under section 8 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**). The two employees sent by Mr O'Flaherty to do the work were not authorised under section 8 of the Act to do sanitary plumbing at the time they carried out the work at the properties.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr O'Flaherty had committed a disciplinary offence under section 89(g) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Ms Tuhenga submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and to 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, the importance of treating practitioners consistently

where possible, and the need to impose the least severe penalty appropriate to ensure the principles and purposes of the disciplinary proceeding were met.

5. Recognising that consistency with other cases was a consideration when determining penalty, Ms Tuhenga referring the Board to its previous decisions in *Holland v Bartlett* (2018/25), *Radovich v Foster* (2020/15), and *Radovich v Barnett* (2021/26). In *Bartlett*, Mr Bartlett pleaded guilty to charges of failing to supervise a trainee and employing, directing, or permitting an unauthorised person to do sanitary plumbing. There were a number of defects with the work. Mr Bartlett was fined $3,000. In *Foster,* Mr Foster pleaded guilty to employing, directing, or permitting unauthorised people to carry out sanitary plumbing. There were no defects with the work but the Board considered Mr Foster's conduct was moderately serious and adopted a starting point of $4,000 for the fine. Finally, in *Barnett,* Mr Barnett pleaded guilty to directing or permitting an unauthorised person to do sanitary plumbing and failing to supervise. In that case, the Board considered the conduct to be at the low end of moderate in terms of seriousness and adopted a starting point for the fine of $3,500.

6. Ms Tuhenga submitted that Mr O'Flaherty's case was similar to the cases of *Bartlett* and *Foster* because it involved two unauthorised workers. She submitted that Mr O'Flaherty's conduct was low to moderate in terms of seriousness. Ms Tuhenga submitted that one of the employees previous experience repairing water leaks was only of limited significance given he was carrying out sanitary plumbing work and leak detection and repair was only part of the work involved in this case.

7. Ms Tuhenga submitted that a fine with a starting point of $4,000 was appropriate having regard to the factors in this case and the comparable authorities. Ms Tuhenga submitted that Mr O'Flaherty did have previous disciplinary offending which was an aggravating factor. In 2020, the Board had found Mr O'Flaherty guilty of employing, directing, or permitting an unauthorised person to do sanitary plumbing as well as causing sanitary plumbing to be carried out in a negligent or incompetent manner. The Board considered Mr O'Flaherty's conduct was serious as he appeared not to understand his responsibilities as a certifier, employer, or business owner and he was fined $4,250, ordered to undergo training on supervision, and ordered to pay $10,200 towards the costs of the proceedings. Ms Tuhenga submitted that it was concerning that Mr O'Flaherty was again facing a charge for similar conduct.

8. Ms Tuhenga submitted that Mr O'Flaherty was entitled to credit in this case for his guilty plea. She also acknowledged that he had since taken steps to ensure one of his employees had become authorised.

9. Ms Tuhenga submitted that under section 107 of the Act, the Board could require Mr O'Flaherty to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. Ms Tuhenga submitted that the starting point for an order of costs was typically half of the actual costs, but this was a matter for the Board to determine in its discretion. Ms Tuhenga submitted that the Board could consider a reduction from the starting point in recognition of Mr O'Flaherty's guilty plea.

10. In relation to penalty, Mr O'Flaherty submitted that the conduct in his case was low to moderate in terms of seriousness and any penalty imposed should reflect this. He submitted that, going forward, he would attempt to employ a qualified tradesman to ensure that there would be no repeat of his conduct.

11. In a statement accompanying his penalty submissions, Mr O'Flaherty stated that he accepted responsibility for the breach of the Act in this case. He stated that he had delegated this job to one of his employees who had significant experience as a water leak repairer and who he submitted was known and highly regarded in the plumbing community. Mr O'Flaherty stated that he was certain the job would be carried out well and too a high standard. He submitted that the other employee that accompanied him was a young apprentice who was there to observe and gain an understanding of the process.

Decision on penalty

12. 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.

13. The Board considered that Mr O'Flaherty's conduct in this case was low to moderate in terms of seriousness. Any risk arising from the work the two unauthorised people had carried out was low and there was no evidence that the work was non-compliant.

14. The Board considered that Mr O'Flaherty's previous disciplinary conviction was an aggravating factor in this case given it was for similar offending to the current case. In terms of mitigating factors, the Board recognised Mr O'Flaherty's guilty plea and the steps he had taken to get his apprentice authorised.

15. The Board determined that the appropriate penalty in this case was a fine with a starting point of $4,000. The Board considered that the aggravating and mitigating factors in this case cancelled each other out and determined that the final fine should be $4,000.

Costs

16. 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 $14,828.58.

17. The Board accepted that Mr O'Flaherty's guilty plea had avoided the costs of a full hearing and determined that he should pay $5,900 towards costs which was around 40% of the total costs.

Publication

18. In accordance with section 74(1)(c)(viii) of the Act, the Board ordered that details of the action taken against Mr O'Flaherty in this matter be recorded on the register of plumbers, gasfitters, and drainlayers. Any other publication of the Board's orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

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

    i. Pursuant to section 106(1)(f) of the Act, Mr O'Flaherty pay a fine of $4,000.

    ii. Pursuant to section 107 of the Act, Mr O'Flaherty pays $5,900 towards the costs of the investigation, prosecution, and hearing.

Appeal

20. If Mr O'Flaherty 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 11 December 2023

Signed



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Martin de Gouw
Deputy Chair
Plumbers, Gasfitters and Drainlayers Board