Plumbers, Gasfitters and Drainlayers Board

CANNELL v GILDERSLEVE

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/18)

Summary

Andrew James Gildersleve, Certifying Gasfitter, was charged with negligent or incompetent gasfitting and carrying out gasfitting in a manner contrary to an enactment. The charges related to the installation of a gas water heater in a horse float.

Mr Gildersleve pleaded guilty to the charges.

The Board considered Mr Gildersleve's offending was moderate to high in terms of seriousness. The Board found there were no aggravating factors in the case and Mr Gildersleve was entitled to credit for his guilty plea, cooperation, lack of any previous disciplinary offending, remorse, and making changes to his practice to ensure the situation would not be repeated.

The Board ordered Mr Gildersleve to pay a fine of $3,500, complete a gasfitting refresher course, and pay $3,900 towards costs.

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

BETWEEN **MELISSA CANNELL**

Investigator

AND **ANDREW JAMES GILDERSLEVE**
Certifying Gasfitter, of Auckland

Registered Person

DECISION OF THE BOARD
11 DECEMBER 2023

Hearing:	Held in Wellington on 19 October 2023
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, James Smith, Beth Healy, Ming-chun Wu
Counsel:	Milan Djurich for the investigator Mr Gildersleve was self-represented
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 [redacted] against Andrew James Gildersleve, Certifying Gasfitter. The complaint related to gasfitting work carried out on a horse float.

Guilty plea

2. On 4 September 2023, Mr Gildersleve pleaded guilty to charges of negligent or incompetent gasfitting and breach of an enactment relating to gasfitting and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Gildersleve is a registered and licensed Certifying Gasfitter.

    b. On or about 18 January 2022, Mr Gildersleve installed a portable continuous flow water heater, two LPG gas bottles, and a regulator in a horse float. Mr Gildersleve fixed the water heater to the internal frame of the horse float near the rear door. He also installed a heat shield.

    c. The water heater was installed in such a way that when the rear door of the horse float was closed, it hit the control buttons on the water heater causing gas to be released.

    d. Mr Gildersleve competed a Certificate of Compliance (**COC**) after the installation was completed. In the COC, he recorded that the gas supply pressure was 2.75kPa. Despite the installation being connected to the gas supply, Mr Gildersleve did not issue a Gas Safety Certificate (**GSC**) for the installation.

    e. On 1 June 2022, on the advice of a fire investigator, the owner of the horse float contacted Energy Safety within WorkSafe NZ to advise that a fire had started in the horse float. The owner understood that the fire had not be caused by the water heater installation.

    f. On 2 June 2022, an employee of Energy Safety went to the owner's address to view the horse float. He determined that the water heater installation was unsafe and he subsequently made a complaint to the Board about Mr Gildersleve's work on the horse float.

    g. The gasfitting work carried out by Mr Gildersleve was negligent or incompetent because:

        i. the water heater had not been installed in accordance with the manufacturer's instructions contrary to clause 2.9.3 of AS/NZS 5601.2 (**Standard**) because it was not intended to be permanently fixed to a structure

ii. the water heater did not have the requisite flue clearance contrary clauses 8.4.1 and 2.8.6(a)-(e) of the Standard

iii. the water heater had been installed inside the horse float contrary to clause 2.9.1(b)(ii) of the Standard

iv. the water heater had been installed within the required exclusion zone of an ignition source contrary to clause 3 and Figure 3.1 of the Standard

v. no isolating valves nor isolator were supplied for the purpose of testing the gas hose prior to connecting it to the water heater as required under clause F2.1 of Appendix F of the Standard

vi. the water heater had been installed with inadequate ventilation and was therefore unsafe contrary to regulation 9 of the Gas (Safety and Measurement) Regulations 2010 (**Regulations**).

h. Regulations 47 and 48 of the Regulations set out the information that must be recorded in a COC. Mr Gildersleve did not attach the manufacturer' instructions to the COC contrary to regulation 74(1)(d).

i. Mr Gildersleve failed to issue a GSC for the installation contrary to regulations 52B, 52E, and 52F of the Regulations.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Gildersleve had committed disciplinary offences under sections 89(a)(i) and 89(a)(ii) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Mr Djurich submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and to maintain proper industry standards. He 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. Mr Djurich submitted that Mr Gildersleve's offending was moderate to high in terms of seriousness. Mr Gildersleve had both installed a water heater inside the horse float when it should have been installed outside and the way in which he had installed it gave rise to several safety-related risks. While recognising that no actual harm had occurred, Mr Djurich submitted that there was a risk of gas leaking when the horse float door was closed and this would have put both people and animals at risk of serious harm. With regard to the issues with the COC and lack of GSC, Mr Djurich submitted that the certification of gasfitting work provides an important check and safeguard for owners and other gasfitters who may work on the

installation in the future. It was therefore important that certificates were accurate and complete and Mr Gildersleve's conduct had fallen well short of this requirement.

6. Recognising that all cases turn on their own facts, Mr Djurich referred the Board to its previous decisions in *Philips v Geange* (2020/32) and *Radovich v Atkinson* (2022/16) to show that an appropriate starting point for a fine in this case was between $5,000 and $6,000. In *Geange*, Mr Geange pleaded guilty to carrying out gasfitting work in a caravan. While Mr Geange had some previous experience in gasfitting, he was not authorised to do gasfitting and there were a number of defects with the work one of which created a risk of carbon monoxide entering the caravan living space. The Board considered Mr Geange's offending was serious and chose a starting point for the fine of $6,500. In *Atkinson*, Mr Atkinson pleaded guilty to non-compliant gasfitting and filing a false or misleading gas certificate in relation to a water heater he installed inside a caravan. The Board considered Mr Atkinson's offending was high in terms of seriousness, but at the low end of that scale. The starting point for the fine in that case was $7,000.

7. Mr Djurich submitted that Mr Gildersleve's offending was comparable to both the *Geange* and *Atkinson* cases, though slightly less serious. In those cases defective work had been carried out in caravans intended for habitation which presented a higher risk to human life. However, he submitted that there were a number of safety-related defects in the present case and for that reason the starting point for the fine should be between $5,000 and $6,000.

8. Taking into account Mr Gildersleve's unblemished disciplinary history and early guilty plea, Mr Djurich submitted that an appropriate end penalty was a fine between $4,000 and $5,000.

9. Mr Djurich submitted that under section 107 of the Act, the Board could require Mr Gildersleve to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. Whether costs should be ordered, and the amount of any costs, was a matter for the Board to determine in its discretion. Mr Djurich submitted that the usual starting point for an order of costs was half of the costs as this reflected the underlying principle that the industry as a whole should not have to bear the costs of disciplinary proceedings where a practitioner has been found guilty of disciplinary offending. However, Mr Djurich acknowledged that a discount to the starting point may be justified given Mr Gildersleve's early acceptance of the charges against him.

10. In relation to penalty, Mr Gildersleve submitted that the appropriate penalty in this case was training given he acknowledged that his knowledge was lacking. In relation to seriousness, Mr Gildersleve submitted that the work had been carried out on a horse float with no accommodation and that a room-sealed appliance would have been required had the vehicle included accommodation. Mr Gildersleve also attached his job sheets for the work done on the horse float which included several notations that the heater should only be used with the door open.

11. In terms of actions he had taken as a result of the complaint, Mr Glidersleve submitted that he had offered to remediate the work to ensure it complied and had also since declined to do a number of other, similar jobs. He submitted that he did not want to end up in this position again.

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 Gildersleve's offending in this case was moderate to high in terms of seriousness. A water heater that is not room-sealed is potentially a very dangerous installation and the Board considered that the public do not necessarily understand the importance of following advice from a gasfitter about how to use an appliance. It was entirely possible that a person could have been inside the float with the door closed and wanted to use the water heater not appreciating that they risked carbon monoxide poisoning if they did so. In addition, the heater was not installed correctly by Mr Gildersleve and this created further safety risks.

14. The Board found there were no aggravating factors in the case and accepted that Mr Gildersleve's guilty plea, cooperation, and lack of previous disciplinary offending were factors in his favour. The Board also accepted that Mr Gildersleve was remorseful and had declined to carry out similar work given he admitted his knowledge in this area was lacking.

15. The Board determined that training and a fine were the appropriate penalties in this case. The Board chose a starting point for the fine of $5,000. Recognising the mitigating factors, the Board reduced this to $3,500. The Board considered that Mr Gildersleve should also complete the Trade Lab Certifying Gasfitter refresher course which he could do online.

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 amounting to $9,768.67.

17. The Board accepted that Mr Gildersleve's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $3,900 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 Gildersleve in this matter should 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 Gildersleve was guilty of disciplinary offences under sections 89(a)(i) and 89(a)(ii) of the Act, the Board made the following orders:

    i. Pursuant to section 106(1)(f) of the Act, Mr Gildersleve pay a fine of $3,500.

    ii. Pursuant to sections 106(1)(e) and 106(2)(b) of the Act, Mr Gildersleve successfully complete the Trade Lab Certifying Gasfitter refresher course in order to renew his practising licence after the 2023-2024 licensing year.

    iii. Pursuant to section 107 of the Act, Mr Gildersleve pays $3,900 towards the costs of the investigation, prosecution, and hearing.

Appeal

20. If Mr Gildersleve 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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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board