Plumbers, Gasfitters and Drainlayers Board

RADOVICH v AINSWORTH

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/19)

Summary

Russell Ainsworth, Certifying Plumber, Certifying Gasfitter, was charged with representative charges of employing, directing or permitting an unauthorised person to carry out gasfitting, failing to comply with a term or condition of his registration or licence in relation to supervision, and issuing false or misleading returns required under an enactment relating to gasfitting.

Mr Ainsworth pleaded guilty to the charges.

The Board considered Mr Ainsworth's offending was moderately serious. The Board found there were no aggravating factors in this case and Mr Ainsworth was entitled to credit for his guilty pleas, cooperation, lack of any previous disciplinary offending, remorse, changes to his work practices, and proactively undertaking training on the certification of gasfitting work.

The Board ordered Mr Ainsworth to pay a fine of $2,900 and pay $3,500 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 **RUSSELL AINSWORTH**
Certifying Plumber, Certifying Gasfitter, of Christchurch

Registered Person

DECISION OF THE BOARD
14 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:	Abigail Stuart for the investigator Daniel Kirby for Mr Ainsworth
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 Russell Ainsworth, Certifying Plumber, Certifying Gasfitter. The complaint related to gasfitting work carried out by [redacted] under Mr Ainsworth's supervision.

Guilty plea

2. On 21 August 2023, Mr Ainsworth pleaded guilty to representative charges of employing, directing, or permitting an unauthorised person to do gasfitting work, failing to comply with a term or condition of his registration or licence in relation to supervision, and issuing false or misleading returns in relation to gasfitting work. Mr Ainsworth also signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Ainsworth is a registered and licensed Certifying Plumber and Certifying Gasfitter. At all relevant times, Mr Ainsworth was the supervisor of [redacted] for gasfitting work.

    b. On 28 October 2022, the Waimakariri District Council notified the Board of concerns regarding a gas certificate issued by Mr Ainsworth for gasfitting work carried out at an address in Oxford. The certificate related to gasfitting work carried out by [redacted] but [redacted] was not authorised to do gasfitting at the time. The Registrar of Plumbers, Gasfitters, and Drainlayers appointed Wayne Radovich to investigate the matter.

    c. Between 8 April 2021 and 31 March 2022, [redacted] was authorised to carry out gasfitting work under an exemption under Mr Ainsworth's supervision. As [redacted] was in the first 24 months of carrying out gasfitting under an exemption, he was required to work only in the direct presence of Mr Ainsworth or a suitably qualified, nominated person when doing gasfitting work.

    d. Mr Ainsworth's supervision of [redacted] involved him arriving at a work site after [redacted] had completed the majority of the work. Mr Ainsworth would then connect the installation to the gas supply and test and commission the work. If the work was considered more complicated, Mr Ainsworth would discuss the job with [redacted] over the phone or meet with him on site before he began the work to discuss it. Other than as described, Mr Ainsworth was not present on site with [redacted] when he was doing gasfitting work.

    e. Between 8 April 2021 and 31 March 2022, [redacted] carried out gasfitting work at nine properties. Mr Ainsworth did not comply with a term or condition of his licence by ensuring that [redacted] only carried out gasfitting work in his direct presence or in the presence of another suitably qualified, nominated person at those properties.

f. On 1 April 2022, [redacted] authorisation expired. To renew his authorisation, [redacted] was required to pay a fee and have Mr Ainsworth confirm his supervision. This did not happen until 26 October 2022 meaning that between 1 April 2022 and 26 October 2022, [redacted] was not authorised to do or assist in doing gasfitting work.

g. Between 1 April 2022 and 26 October 2022, [redacted] carried out gasfitting work at six properties when he was not authorised under section 9 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**) to do gasfitting work. Mr Ainsworth directed and/or permitted an unauthorised person to do gasfitting at those properties.

h. Mr Ainsworth provided 15 gas certificates he had issued for gasfitting work carried out by [redacted] under his supervision between October 2021 and June 2022. Of those certificates, after the words "test and commission [relevant date]", ten recorded [redacted] name or initials. Those certificates were false or misleading as Mr Ainsworth had been responsible for the testing and commissioning of that work.

i. Six of the certificates issued by Mr Ainsworth between June 2022 and 18 October 2022 were false or misleading because they stated that the work had been done lawfully when [redacted] was unauthorised at the time and therefore carried out the work in breach of section 9 of the Act.

j. There were no known defects with any of the gasfitting work carried out by [redacted].

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Ainsworth had committed disciplinary offences under sections 89(g), 89(c), and 89(f) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Ms Stuart 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. Ms Stuart submitted that Mr Ainsworth's offending was moderate to high in terms of seriousness when viewed in totality. Mr Ainsworth had breached both his supervision and certification responsibilities and Ms Stuart submitted that both were important safeguards when it came to gasfitting work given the potential for significant harm if such work is not done correctly.

6. Ms Stuart submitted that Mr Ainsworth offending on the supervision and directing or permitting charges was ongoing over an extended period of time and involved a number of properties. She submitted that, as a registered and licensed practitioner, Mr Ainsworth should have been aware that all licences and exemption authorisations need to be renewed on 1 April every year. Despite this, he did not take adequate steps to assure himself that [redacted] was appropriately authorised. Mr Ainsworth should also have been aware that he would need to approve his supervision of [redacted], but he was never asked to do this and it should have alerted him to [redacted] unauthorised status.

7. Ms Stuart submitted that gas certificates are a legal declaration that the work has been done compliantly and is safe. For this reason, they needed to be accurate and complete. Mr Ainsworth should have understood this as a certifying gasfitter. She submitted that the errors with Mr Ainsworth's gas certificates showed that he did not have a good understanding of the purposes and importance of certifying gasfitting work.

8. Ms Stuart accepted that there had been no known defects with [redacted] work and that he did have some previous experience doing gasfitting as a trainee gasfitter. However, she submitted that his previous experience had been periodic and he had not held an authorisation to do gasfitting for nine years.

9. Noting that consistency with other cases was an important consideration, Ms Stuart referred the Board to its previous decisions in the cases of *Costelloe v Su* (2020/34), *Radovich v Foster* (2020/15), and *Tiernan v Perkins and Radovich v Perkins* (2022/3) to show that an appropriate starting point for a fine in this case was between $5,000 and $6,000. In the *Su* and *Foster* cases, the practitioners employed, directed or permitted unauthorised people to do gasfitting and sanitary plumbing respectively. In both cases the Board adopted a starting point for the fine of $4,000. In the *Perkins* case, Mr Perkins pleaded guilty to charges of employing, directing, or permitting unauthorised people to do drainlaying and carry out unauthorised drainlaying himself. The Board adopted a starting point of $4,500 for the fine in his case.

10. Ms Stuart submitted that Mr Ainsworth's case was more serious than *Su* because [redacted] had carried out more work and a greater number of properties were involved. She submitted the case was more comparable with both *Foster* and *Perkins* which involved directing multiple unauthorised people. However, neither case involved gasfitting which may give rise to a more imminent risk of injury than sanitary plumbing or drainlaying, and neither case involved the additional offences of lack of supervision and certification failings.

11. On the basis of the comparable authorities. Ms Stuart submitted that the appropriate starting point for the fine in Mr Ainsworth's case was between $5,000 and $6,000.

12. Ms Stuart submitted that the investigator was not aware of any aggravating factors personal to Mr Ainsworth. She also submitted that Mr Ainsworth's cooperation, lack

of previous disciplinary offending, and guilty pleas were mitigating factors in his favour.

13. In addition to a fine, Ms Stuart submitted that Mr Ainsworth should be ordered to complete further training on his responsibilities as a certifier, both in relation to the certification of gasfitting work and supervision. She submitted that such training was appropriate to ensure public protection and the maintenance of industry standards.

14. Ms Stuart submitted that under section 107 of the Act, the Board could require Mr Ainsworth 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 costs and she acknowledged that Mr Ainsworth may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

15. On behalf of Mr Ainsworth, Mr Kirby traversed the principles applicable to determining penalties in disciplinary cases. He submitted that Mr Ainsworth's lack of any disciplinary history, acceptance of responsibility, full cooperation, remorse, and proactive changes to his work practices all supported a penalty that focused on rehabilitation and was the least severe penalty necessary to maintain industry standards.

16. While Mr Ainsworth had accepted the summary of facts, Mr Kirby submitted there were features of Mr Ainsworth's offending which were relevant to an assessment of his culpability in the case. They were the lack of any defects with the work carried out by [redacted] and the lack of commerciality. Mr Kirby submitted that Mr Ainsworth had been motivated by a desire to assist a friend rather than profiting from intentional non-compliance with industry requirements.

17. Mr Kirby submitted that Mr Ainsworth had not been aware [redacted] had not renewed his authorisation. He had explained to him the importance of keeping his authorisation up to date as soon as he became aware that [redacted] was not authorised. Mr Ainsworth did recognise though that he also needed to adopt a practice of checking that the authorisations of the people he supervised were current.

18. With regard to Mr Ainsworth's supervision of [redacted], Mr Kirby submitted that [redacted] had a total of almost four years' experience doing gasfitting work between July 2006 and March 2013. [redacted] had also worked alongside Mr Ainsworth doing sanitary plumbing and gasfitting work. He submitted that gasfitting work was therefore not completely foreign to [redacted] and Mr Ainsworth would be present to commission each job and provide other support to him. While Mr Kirby accepted that Mr Ainsworth's lack of adequate supervision was ongoing, he submitted that this was not a deliberate course of conduct but rather an incorrect understanding of the requirements and this lessened Mr Ainsworth culpability. Mr Kirby submitted that Mr Ainsworth had since changed his work practices and no longer supervised anyone.

19. Mr Ainsworth accepted that he had erroneously recorded [redacted] name or initials on gas certificates when he commissioned work and that this was misleading. However, Mr Kirby submitted that he had resolved to upskill on gas certificates to ensure there any confusion was avoided and he provided accurate information when completing them. Mr Kirby submitted that Mr Ainsworth had recently completed a gas certification course run by Master Plumbers to improve his knowledge and understanding of what was expected of him as a certifying gasfitter.

20. Mr Kirby largely accepted the investigator's analysis of the *Su*, *Foster*, and *Perkins* cases but submitted that while some aspects of Mr Ainsworth's case were more serious than those cases, other aspects were less serious. In the *Foster* case, the scale of the unauthorised work had been much greater than [redacted]. Mr Foster had also been like Mr Ainsworth in naïvely relying on what he had been told by the unauthorised men he employed. In *Perkins*, Mr Perkins had actual knowledge that the two men he employed were unauthorised and had also acted outside his own authorisation making his conduct more serious. Unlike Mr Su and Mr Foster, Mr Ainsworth did not employ an unauthorised person. Rather, he permitted [redacted] to do gasfitting when he was not authorised.

21. Mr Kirby submitted that Mr Ainsworth's offending was most similar to Mr Perkins, with the supervision failures and certificate charge being equivalent to Mr Perkins carrying out work knowing he was unauthorised. The starting point fine in *Perkins* had been $4,500 and Mr Kirby submitted this was an appropriate starting point for Mr Ainsworth, combined with the requirement to undertake further training if required. Mr Kirby submitted that training on supervision was unnecessary because of Mr Ainsworth decision that he would not resume supervising others in the future.

22. Mr Kirby submitted that Mr Ainsworth had no previous disciplinary history, had pleaded guilty at the first opportunity, and accepted full responsibility for his offending. He described the situation as a wake-up call for Mr Ainsworth and submitted that he had since changed his practices and would not be likely to offend again. Mr Ainsworth had cooperated with the investigation, providing the investigator with copies of all the certificates issued for work completed by [redacted] under his supervision. He had also provided the investigator with full and frank answers throughout and had not disputed the investigator's findings. Finally, Mr Ainsworth had proactively completed training through the gas certification course run by Master Plumbers.

23. Mr Kirby submitted that Mr Ainsworth was at the end of his career which had spanned 42 years during which he had never been the subject of disciplinary proceedings. Mr Kirby submitted that the Board should take into consideration that fact that Mr Ainsworth would soon be without an income other than a pension.

24. Having regard to all of the mitigating factors in the case, Mr Kirby submitted that the fine should be reduced to $2,500 - $3,000.

25. Mr Kirby accepted that Mr Ainsworth could be required to pay a reasonable sum towards costs and that the usual starting point was half the costs incurred. Mr Kirby submitted that Mr Ainsworth substantial cooperation and guilty pleas were factors the Board should have regard to in determining what was reasonable in terms of costs, along with Mr Ainsworth's future income being a pension.

26. Mr Kirby referred the Board to its decision in *Thomas v Sullivan & Botica* (2021/24) where the recovery of costs in the case had been shared equally between Mr Sullivan and Mr Botica meaning that each was only liable for around 20% of the total costs. Mr Kirby submitted that it would be just and reasonable for Mr Ainsworth to pay 20% of the Board's costs if it also took into consideration any contribution towards costs to come from [redacted], who was also facing disciplinary charges.

Decision on penalty

27. 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.

28. The Board considered that Mr Ainsworth's offending was moderately serious. The Board accepted that there were no known defects with the work carried out. The Board found there were no aggravating factors in the case. Mr Ainsworth's guilty pleas, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour, as was his remorse, the changes he had made to his work practices, and the training he had already undertaken on certifying gasfitting work.

29. The Board determined that a fine was an appropriate penalty in this case. The Board determined that the starting point should be $4,500. Recognising all of the mitigating factors, the Board reduced this to $2,900. The Board declined to order any training on supervision recognising that Mr Ainsworth had ceased supervising and supervision had also been covered in the Board's 2023 continuing professional development programme.

Costs

30. 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 $8,841.85. The Board noted that these costs related solely to the charges against Mr Ainsworth and did not include any costs relating to the charges against [redacted].

31. The Board accepted that Mr Ainsworth's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $3,500 towards costs which was around 40% of the total costs.

Publication

32. In accordance with section 74(1)(c)(viii) of the Act, the Board ordered that details of the action taken against Mr Ainsworth 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

33. Being satisfied that Mr Ainsworth was guilty of disciplinary offences under sections 89(g), 89(c), and 89(f) of the Act, the Board made the following orders:

    i. Pursuant to section 106(1)(f) of the Act, Mr Ainsworth pay a fine of $2,900.

    ii. Pursuant to section 107 of the Act, Mr Ainsworth pays $3,500 towards the costs of the investigation, prosecution, and hearing.

Appeal

34. If Mr Ainsworth 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 14 December 2023

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board