Plumbers, Gasfitters and Drainlayers Board

RADOVICH v MANSON

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/20)

Summary

Craig Manson, Certifying Plumber, was charged with a representative charge of carrying out gasfitting in a manner contrary to an enactment. The charge related to residential gasfitting work carried out at six properties over a seven month period when Mr Manson did not hold an authorisation to carry out gasfitting.

Mr Manson pleaded guilty to the charge.

The Board considered Mr Manson's offending was moderately serious but at the higher end of that scale. The Board found there were no aggravating factors in the case and Mr Manson was entitled to credit for his guilty plea, cooperation, and lack of any previous disciplinary offending.

The Board ordered Mr Manson to pay a fine of $4,125 and pay $2,300 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 **CRAIG MANSON**
Certifying Plumber, of Oxford

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 Tim McKenzie for Mr Manson
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 Craig Manson, Certifying Plumber. The complaint related to gasfitting work carried out by Mr Manson between April 2022 and October 2022.

Guilty plea

2. On 23 August 2023, Mr Manson pleaded guilty to a representative charge of carrying out gasfitting in a manner contrary to an enactment and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Manson is a Certifying Plumber and holds an exemption to carry out gasfitting under supervision.

    b. Between 8 April 2021 and 31 March 2022, Mr Manson held an exemption to carry out gasfitting under the supervision of certifying gasfitter [redacted]. On 1 April 2022, Mr Manson's authorisation expired. To renew his authorisation, Mr Manson was required to pay a fee and have [redacted] confirm his supervision. This did not happen until 26 October 2022 meaning that between 1 April 2022 and 26 October 2022, Mr Manson was not authorised to do or assist in doing gasfitting work.

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

    d. Between 1 April 2022 and 26 October 2022, Mr Manson carried out gasfitting work at six properties. Because Mr Manson did not hold an authorisation to do gasfitting during this time, the work he carried out was contrary to section 9 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

    e. There were no known defects with any of the gasfitting work carried out by Mr Manson.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Manson had committed a disciplinary offence under sections 89(a)(ii) 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 Manson's offending was moderately serious. She submitted that ensuring that gasfitting work is only undertaken by people who were authorised was critical to ensuring that such work was carried out safely. This was directly relevant to the purposes of the Act which were about protecting the health and safety of the public by ensuring the competency of people who carried out gasfitting work.

6. Ms Stuart submitted that Mr Manson's offending involved six properties and covered a seven month period during which Mr Manson was aware that he had not renewed his exemption. Mr Manson claimed that the reason he had not renewed his exemption was because he mistakenly thought he needed to complete continuing professional development (CPD) in order to renew his authorisation. He said he had difficulties doing this and then simply forgot to renew it. Ms Stuart submitted that, as a registered plumber and having previously held gasfitting authorisations, Mr Manson must have been aware of the importance of being authorised to do restricted work. He would also have been aware of the need to be supervised under his authorisation but he continued to carry out restricted work regardless.

7. Ms Stuart acknowledged that there were no known defects with the work Mr Manson carried out whilst unauthorised. She also accepted that Mr Manson was not wholly lacking in training in gasfitting work having previously held gasfitting authorisations, including as a trainee. However, as he was still in the first 24 months of working under an exemption authorisation, Mr Manson required direct presence supervision from his supervisor which, she submitted, demonstrated that his experience was still limited.

8. 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 Holmes* (2017/8), *Thomas v Jaspers* (2018/28), *Thomas v Goundar* (2022/2), and *Phillips v Geange* (2020/32). All of the cases involved unauthorised gasfitting work being carried out and all involved defective or non-compliant work ranging from moderately serious to high risk. Fines in the cases ranged from $3,000 to $6,500.

9. Ms Stuart submitted that Mr Manson's case was similar to the *Holmes* and *Jaspers* cases, both of which involved registered plumbers who had some past experience doing gasfitting. The defects with the work in those cases did not give rise to any safety concerns. Ms Stuart submitted that while there were no known defects with Mr Manson's work, he had carried out more gasfitting than in either *Holmes* or *Jaspers*, over an extended period of time.

10. Having regard to the cases, Ms Stuart submitted that the appropriate starting point for the fine for Mr Manson was between $4,000 and $5,000.

11. Ms Stuart submitted that the investigator was not aware of any aggravating factors personal to Mr Manson and she acknowledged that discounts were available to recognise his cooperation, lack of previous disciplinary offending, and guilty plea.

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

13. On behalf of Mr Manson, Mr McKenzie accepted that a fine was an appropriate penalty. However, he submitted that Mr Manson's culpability was significantly lower than what the investigator had submitted.

14. With regard to the cases referred to by the investigator, *Holmes*, *Jaspers*, *Goundar*, and *Geange*, Mr McKenzie submitted that all of those cases involved defective work, some of which was quite serious. In Mr Manson's case, it was accepted that there were no issues with the work he had carried out.

15. Mr McKenzie submitted that while Mr Manson had technically carried out gasfitting work, he had only run pipework to appliances. His supervisor, a certifying gasfitter, had connected the appliances to the gas supply, tested, and commissioned the work. Mr McKenzie submitted that this was quite different to an unauthorised person carrying out the entirety of the work and defective work at that.

16. Mr McKenzie submitted that there was no intention on Mr Manson's part and while this was not relevant to liability given the offences were strict liability, it was relevant to penalty. He also submitted that Mr Manson was acting under misapprehensions at the relevant time. The first was that he believed he was required to complete CPD in order to renew his authorisation. While this was not in fact correct, Mr Manson belief that it was a requirement was reasonable. Mr McKenzie submitted that the Board's own website stated that CPD was a requirement when renewing a licence each year and it took further enquiry to find that this only related to registered people. Mr McKenzie submitted that without the requirement to complete CPD, all Mr Manson had to do was pay a fee and the absence of that fee could hardly be said to strike at the heart of the safety regime.

17. Mr McKenzie submitted that the second misapprehension on Mr Manson's part related to the 24 month direct presence supervision requirement that was in place. He submitted that Mr Manson had completed 12 months direct presence supervision as a trainee and he mistakenly believed that he no longer required direct supervision. He therefore believed that the supervision arrangements he had in place with his supervisor were compliant.

18. Given Mr Manson believed that the supervision arrangements he had in place were adequate, Mr McKenzie submitted that it was no surprise that there were several properties involved in this case. Mr Manson was working fulltime and the number of jobs he carried out simply reflected this. He submitted that it could not elevate the seriousness of the case to the same level, or higher, as the other cases the investigator had referred to.

19. Mr McKenzie submitted that the considerations he had identified meant that Mr Manson's case was quite unusual and at the very bottom end of culpability.

20. Mr McKenzie submitted that there were several mitigating factors in Mr Manson's case. He had been cooperative throughout the process, accepting the charges and facts at the outset. As the agreed summary of facts showed, Mr Manson had disclosed several other jobs which had occurred. Finally, Mr Manson had no previous disciplinary history.

21. Mr McKenzie submitted that the starting point for a fine should be in the region of $2,000 and the end point should be $1,500.

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 that Mr Manson's offending was moderately serious, but at the higher end of that scale. As a certifying plumber, Mr Manson was aware of the requirement to be authorised to carry out restricted work and would have known that he was not authorised to carry out the gasfitting work he did. The Board therefore considered that his offending in this case was intentional.

24. The Board found there were no aggravating factors in the case and Mr Manson's guilty plea, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour.

25. The Board considered that a fine was an appropriate penalty and determined that the appropriate starting point was $5,500. This was reduced to $4,125 to recognise the mitigating factors.

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 $5,923.05.

27. The Board accepted that Mr Manson's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $2,300 towards costs which was around 40% of the total costs.

Publication

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

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

    i. Pursuant to section 106(1)(f) of the Act, Mr Manson pay a fine of $4,125.

    ii. Pursuant to section 107 of the Act, Mr Manson pays $2,300 towards the costs of the investigation, prosecution, and hearing.

Appeal

30. If Mr Manson 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