Plumbers, Gasfitters and Drainlayers Board

PIDGEON v STILL

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/21)

Summary

Chad Still, Certifying Plumber, Certifying Gasfitter, was charged with causing negligent or incompetent gasfitting, employing, directing or permitting an unauthorised person, and failing to issue a gas safety certificate. The charges related to the installation of a gas fryer at a commercial property in Hamilton/Kirikiriroa in June 2022.

Mr Still defended the charges.

The investigator's case was that Mr Still's employee had relocated a gas pipe for a fryer in the kitchen of the premises but had not installed a safety chain on the appliance. The appliance was left connected to the gas supply or left in a state where it was capable of being connected to the gas supply and was in use despite being non-compliant. The employee that carried out this work did not hold an authorisation to do gasfitting at the time, and Mr Still never made the appliance compliant or inspected and certified it, or made arrangements for this to happen.

Mr Still's position was that the installation had not been completed, that the manager of the property had been told this, and informed that they could not use the appliance. Before Mr Still was able to return to the property and complete the installation, inspect it, and certify it, he was trespassed from the property. Mr Still was therefore prevented from carrying out this work. With regard to his employee being unauthorised, Mr Still's position was that he had four years of experience as a gasfitter and it was a simply matter of paying the fee in order to get him authorised.

The Board determined that because the appliance was connected to the gas supply or left in a state where it could be connected, the installation was complete. If an installation is incomplete, the gas supply to the appliance must be capped off and not be capable of being turned on. Given the installation lacked a required safety chain, it was non-compliant and the work was therefore negligent or incompetent.

The Board found that the employee that carried out the work was unauthorised and that this was not a minor matter given he had never held an authorisation to do gasfitting.

Finally, the Board found that Mr Still had failed to issue a gas safety certificate as required under the Gas (Safety and Measurement) Regulations 2010, given the appliance was connected to the gas supply, or to take steps to ensure this happened.

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

BETWEEN **MICHAEL PIDGEON**

Investigator

AND **CHAD JOSEPH LEE STILL**
Certifying Plumber, Certifying Gasfitter, of Hamilton/Kirikiriroa

Registered Person

DECISION OF THE BOARD ON LIABILITY
14 MAY 2024

Hearing:	Held in Wellington/Te Whanganui-a-Tara on 29 November 2023
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Beth Healy, Ming-chun Wu, Sue Simons
Counsel:	Elena Mok for the investigator Phillip Ross for Mr Still
Legal advisor:	Richard May

Disciplinary hearing

1. On 29 November 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Hardik Gupta against Chad Still, Certifying Plumber, Certifying Gasfitter. The complaint related to gasfitting work carried out at commercial address in Hamilton/Kirikiriroa.

Charges

2. By Notice of Disciplinary Charges dated 19 April 2023, Mr Still was charged with the following offences:

    a. causing gasfitting to be carried out in a negligent or incompetent manner, which is a disciplinary offence under section 89(a)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**) (**charge one**)

    b. employing, directing, or permitting an unauthorised person to do gasfitting, which is a disciplinary offence under section 89(g) of the Act (**charge two**)

    c. failing to issue a return required under an enactment relating to gasfitting, which is a disciplinary offence under section 89(f) of the Act (**charge three**).

Summary of investigator's opening submissions

3. Ms Mok submitted that the charges related to gasfitting work carried out at The Local in Te Rapa, Hamilton in June 2022 by Moko-Nui-Arangai Tai McGrath. The work involved Mr McGrath relocating a gas pipe for a deep fryer in the kitchen, which he then connected to the gas supply. Ms Mok submitted that it did not appear to be in dispute that Mr McGrath carried out this work, or that this constituted gasfitting work. Nor, she submitted, did it appear to be in dispute that Mr Still caused the gasfitting work to be carried out. Mr McGrath worked for Mr Still's company and Mr Still had arranged the job and talked to Mr McGrath about it.

4. With regard to charge one, Ms Mok submitted that Mr Still also did not appear to contest that there was no safety chain securing the gas installation. Ms Mok submitted that Sam Wood would give evidence that this meant the installation was non-compliant and posed a moderate safety risk as the supply pipe to installation was susceptible to damage if the appliance was pulled forward. This, in turn, could result in a gas leak. Ms Mok submitted that this defect meant that work had been carried out in a negligent or incompetent manner.

5. Ms Mok submitted that the Board should not accept Mr Still's position that the installation was incomplete and he had informed Hardik Gupta, the manager of The Local, that he would need to return and install a safety chain after Queen's Birthday weekend. Mr Gupta's evidence was that he was told the work was complete and he could use the fryer. Ms Mok submitted that regardless of what Mr Still told Mr Gupta, the evidence would show that the installation was connected to the gas

supply without a safety chain and was being used for a number of weeks. This made the gasfitting negligent or incompetent.

6. Ms Mok submitted that under section 9 of the Act, only authorised people may carry out gasfitting. When Mr McGrath carried out gasfitting at The Local on 3 June 2022, he was not authorised to do gasfitting. He did not obtain an authorisation to do gasfitting until September 2022. Ms Mok submitted that Mr Still appeared to be relying on Mr McGrath's previous gasfitting experience, but this did not mean he was authorised when he did the gasfitting at The Local. Ms Mok submitted that the evidence would therefore establish that charge two was made out.

7. The third charge related to Mr Still's failure to issue a Gas Safety Certificate (**GSC**) for the installation. Under the Gas (Safety and Measurement) Regulations 2010 (**GSMR**), the person connecting an installation to the gas supply or their supervisor must issue a GSC certifying the installation is safe to use. Only certifying gasfitters are permitted to certify gasfitting work and issue GSCs.

8. Ms Mok submitted that Mr Still accepted he did not issue a GSC but states he did not need to because the installation was incomplete. Following the work carried out by Mr McGrath, issues arose over payment for the work and this prevented the work from being completed. However, Ms Mok submitted there were three problems with Mr Still's position. First, the installation should not have been connected to the gas supply if it was not yet complete. Secondly, under the GSMR, gasfitting work will be taken as complete at the point at which is it connected to the gas supply and this then gives rise to the legal requirement to issue a GSC. Thirdly, Mr Still could not have issued a GSC because he did not hold a current practising licence which was required in order for him to be able to do and certify gasfitting work. Ms Mok submitted that for these reasons, the evidence would show that charge three was made out.

Summary of evidence – Michael Pidgeon

9. The first witness was the investigator, Michael Pidgeon. The Board considered Mr Pidgeon's evidence contained in a written statement dated 20 September 2023. Mr Pidgeon also appeared at the hearing via audio link.

10. Mr Pidgeon stated that he was an investigator employer by the Board. On 2 November 2022 he was appointed by the Registrar of Plumbers, Gasfitters, and Drainlayers to investigate a complaint from Mr Gupta about gasfitting work carried out by Mr McGrath at The Local on 3 June 2022.

11. Mr Pidgeon stated that at the time Mr McGrath carried out the work, he was not authorised to do gasfitting. Mr McGrath did not obtain a limited certificate trainee authorisation to do gasfitting under Mr Still's supervision until 1 September 2022. Mr Pidgeon stated that Mr Still was also unauthorised at the time the work was carried

out as his licence as a certifying gasfitter had expired on 1 April 2022. Mr Still renewed his licence on 1 September 2022.

12. Mr Pidgeon described his investigation into Mr Gupta's complaint. Ms Mok took Mr Pidgeon through the CCTV footage from The Local obtained during his investigation, which the Board viewed, the invoice for the work Mr McGrath carried out, and text messages and emails to and from Mr Still which Mr Gupta had provided with his complaint or during the course of the investigation.

13. On behalf of Mr Still, Mr Ross questioned Mr Pidgeon about his understanding of Mr Still's position on the issues of his initial conversation with Mr Gupta about what was agreed as to payment for the work and his inability to issue a certificate for the work because it was incomplete. Mr Ross questioned Mr Pidgeon about his awareness of a family tragedy affecting Mr Still, and whether the fact that he was unlicensed at the time was just a matter of Mr Still paying the fee and having his licence issued.

14. Mr Ross also questioned Mr Pidgeon about a letter from the Police attached to Mr Gupta's statement, which referred to common assault, and Mr Pidgeon confirmed he was not aware of any assault by Mr Still. Mr Ross asked Mr Pidgeon whether he knew Mr Still had been trespassed from the property on 22 June 2022 and he replied that Mr Still had told him that. When asked, Mr Pidgeon stated he could not say from the CCTV footage that a person had removed the gas meter from the property as Mr Gupta alleged.

Summary of evidence – Harpreet Singh

15. The next witness was Harpreet Singh. Mr Singh is the owner of The Local. The Board considered Mr Singh's evidence contained in a written statement dated 18 September 2023. Mr Singh also appeared at the hearing by audio-visual link.

16. Mr Singh stated that he was aware of the complaint made by Mr Gupta to the Board and that it related to an invoice dispute with Mr Still. Mr Singh stated that on 7 June 2022, Mr Still's company sent an invoice for gasfitting work carried out on 3 June 2022. The invoice stated the installation had been tested and the gas at the property was reconnected and left in working order.

17. Mr Singh stated that on 22 June 2022, he received a phone call from Mr Gupta saying that Mr Still had arrived at the property demanding payment of the invoice. Mr Gupta told him that Mr Still had removed the gas meter from the property and would not return it until the invoice was paid. Mr Singh then rang Mr Still to arrange payment of the invoice. He stated that Mr Still never said anything about inspecting the installation. Mr Singh stated that he paid the invoice that afternoon.

18. Mr Singh stated he had not had any further involvement with Mr Still or his company. He also stated he had not received a gas safety certificate for the work.

19. In response to questions from Mr Ross, Mr Singh acknowledged that he was not at the property when Mr Gupta spoke to Mr Still and made the arrangements for him to do the gasfitting work. He agreed he was not involved in those arrangements and his knowledge of them was only what Mr Gupta told him. He also did not know what was agreed at the end of the day on 3 June 2022 after the work had been carried out.

20. Mr Singh said that he saw a copy of the invoice and he asked Mr Gupta why it was so much for the job. Mr Gupta then contacted Mr Still and asked why the invoice was as high as it was. It was then that Mr Still came to the property and "all the drama started". Mr Singh agreed he wasn't at the property at that time but was aware Mr Still got trespassed.

21. Mr Singh knew Mr Still had said he would take back his parts and fittings used on the job because that is what he did but he did not know whether Mr Still told Mr Gupta he was relying on a retention of ownership clause. He said he knew they had an argument and Mr Still had mistreated his staff and was barred from the property. At the same time, he said someone took out the meter while the kitchen was in operation. He said they contacted Mr Still and paid straightaway because they needed the gas on to keep the kitchen open. Mr Singh said the part wasn't returned until the next day. When asked if he knew Mr Still had only isolated the gas rather than removed the meter, Mr Singh said all he knew was that there was no gas supply.

22. Mr Singh agreed that he didn't do anything to reverse the trespass order after Mr Still was paid. When asked if he made any further contact with Mr Still about the gas certificate, Mr Singh replied he couldn't remember but possibly not.

Summary of evidence – Samuel Wood

23. The next witness was Samuel Wood. Mr Wood provided technical evidence in relation to the gasfitting work carried out. The Board considered Mr Wood's evidence contained in a written statement dated 20 November 2023. Mr Wood also appeared at the hearing via audio-visual link.

24. Mr Wood stated that he was familiar with Mr Gupta's complaint against Mr Still. On 25 January 2023, he had peer reviewed a technical assessment completed by a technical advisor to the Board. Having reviewed the assessment and all of the source documentation for that assessment, Mr Wood stated he agreed with and adopted the technical advisor's findings in it. In particular, Mr Wood agreed that:

    a. the lack of a safety chain on the installation made it non-compliant and created a moderate risk of harm

    b. the gas should never have been connected to the installation because Mr McGrath was an unlicensed trainee at the time and best practice would have been to leave the appliance disconnected until a registered and licensed practitioner could complete the installation

c. the work required a gas certificate to be issued and the work to be entered on to the WorkSafe Electricity and Gas High-Risk Database

d. as an unlicensed gasfitter at the time, Mr Still would not have been able to issue a gas certificate for this work.

25. Mr Ross questioned Mr Wood about gas certificates and Mr Wood agreed it was a certification that the job was complete and the installation was safe. Mr Ross put it to him that you could not issue a gas certificate if the installation was incomplete as Mr Still was saying. Mr Wood agreed but said that as soon as an installation is connected to the gas supply, then the person is obliged to issue a gas certificate. If an installation is incomplete, it should not be connected to the gas supply. Mr Ross put it to Mr Wood that the gas had to be connected in order to test the system for leaks. Mr Wood said not necessarily.

26. Mr Ross asked whether isolating the gas at the meter would cut off all gas to the premises, which Mr Wood said it would. However, in some circumstances it is possible to isolate the gas to individual appliances. Mr Ross referred Mr Wood to the invoice for the work which referred to a shut-off valve inside the premises and asked whether this was another way of shutting off the gas. Mr Wood replied it wasn't possible to know as the valve referred to was not found. Mr Wood agreed that there was also a shut-off valve on the appliance itself.

27. Mr Ross put it to Mr Wood that Mr Still had told Mr Gupta it was possible they would not be able to complete the job on 3 June 2022 and that, after the job was done, Mr Gupta was told the appliance could not be used because the job had not been completed. Mr Ross put it to Mr Wood that this was prudent. Mr Wood agreed but said that if the appliance was not to be used it needed to be left in a state where it could not be used and that meant capping off the gas supply. Mr Wood did not agree that turning the supply off at the appliance was another way of achieving that because the property owner could simply turn the supply back on again.

28. Mr Ross questioned Mr Wood about the technical assessment noting that it was only the lack of the restraint chain that was non-compliant. Mr Wood accepted this. Mr Wood also accepted that the installation was not complete insofar as the installation had not been brought up to compliance. With regard to Mr Still not being able to return to the property to certify the work, Mr Ross put it to Mr Wood that Mr Still's only option in those circumstances was to remove the gas meter. Mr Wood repeated that if the installation was not completed, it should not have been left in a state where it could be used. Mr Ross then put it to Mr Wood that, having told the property owner the installation was incomplete and could not be used and having turned off the gas supply to the fryer until he could return after the weekend, it was reasonable to expect the appliance would not be used. Mr Wood maintained if the appliance was not to be used, it needed to be capped off.

29. Mr Ross stated that Mr McGrath who carried out the work at the property had four years' experience even though he did not have a current certificate. He asked Mr Wood whether it was correct that Mr Still had to inspect Mr McGrath's work. Mr Wood agreed, stating that as the certifier, Mr Still was responsible for the work. Mr Wood did agree that the work could be done by a trainee providing a certifier inspected the work. In re-examination Ms Mok clarified that the trainee was required to hold a current authorisation and Mr Wood agreed, stating that it was unauthorised work otherwise.

30. The Board questioned Mr Wood about how many years a trainee gasfitter must be under direction supervision. Mr Wood stated the mandatory requirement was 12 months minimum, but after that it was on a case-by-case basis based on their ability, what they have proven they can do, and the complexity of the job. Mr Wood also stated that a tradesman or certifier was required to commission the installation. Finally, Mr Wood confirmed that a trainee who did not hold a current certificate could not carry out any restricted gasfitting work.

Summary of evidence – Hardik Gupta

31. The final witness for the investigator was Hardik Gupta. Mr Gupta is the manager of the property. The Board considered Mr Gupta's evidence contained in a signed statement dated 1 November 2023.

32. Mr Gupta stated that on 3 June 2022, he engaged Mr Still's company to relocate a gas pipe in the kitchen. He stated he did not receive a formal quote for the work, but Mr Still confirmed over the phone that he would move the pipe. That afternoon a tradesman from the company came to the property and carried out work for just under an hour. Before leaving, the tradesman told Mr Gupta the work was finished, he had reconnected the pipe, and Mr Gupta could start using the deep fryer. He stated that staff used the deep fryer that night without any issue.

33. On 7 June 2023, Mr Gupta stated that he received an invoice for the work charging for 2.75 hours. The invoice also stated the installation had been tested and the gas was reconnected and left in working order. Mr Gupta stated he emailed the company on 14 June 2023 enquiring about the number of hours charged and Mr Still replied stating he had checked the job card and the number of hours was correct.

34. On 22 June 2023, Mr Gupta stated that Mr Still and another man came to the property. Mr Gupta stated that Mr Still was intimidating and he felt scared. Mr Gupta said he and Mr Still argued about the number of hours charged on the invoice and Mr Still became aggressive and made racist comments to him. As he was leaving the property, Mr Gupta stated Mr Still removed the gas meter and said he would not return it until the invoice was paid. Mr Gupta stated he was forced to close the kitchen for the remainder of the day because there was no gas.

35. Mr Gupta stated he made a complaint to the police about Mr Still but noted that they did not get involved. A copy of a letter from the Police concerning the incident was attached to his statement.

36. Mr Gupta stated he contacted the property owner, Mr Singh, who paid the invoice that afternoon. The following day, 23 June 2023, Mr Still returned to the property and reinstalled the gas meter. Mr Still stated that he had still not received a gas certificate for the work.

Summary of Mr Still's opening submissions

37. Mr Ross submitted that Mr Still's position was that he had agreed to do an urgent gasfitting job on 3 June 2022, just before Queen's Birthday weekend but had made it clear from the outset that he could not guarantee the job would be completed. This was because it may not be possible to obtain any required parts for the job from the suppliers as they may close early before the long weekend. He submitted that the terms of trade were agreed between the parties, including the price, and the customer was clearly told a final inspection would be required before the job could be signed off.

38. Mr Ross submitted that the bulk of the installation was carried out by a trainee under Mr Still's supervision. However, the job could not be completed and the customer was told the appliance could not be used over the long weekend and would be finished the next business day, being 7 June 2022.

39. Mr Ross submitted that a dispute arose over payment for the job on 7 June 2022 and the result was that Mr Still was trespassed from the property making it impossible for him to conduct the final work required of inspecting and certifying the installation. Mr Ross submitted that Mr Still isolated the gas meter, and the invoice was paid. However, the trespass order was not lifted, and Mr Still could not complete the job.

40. Regarding charge one, Mr Ross submitted that Mr Still did not dispute that a safety chain was required on the appliance, but claimed it had not been possible to obtain this from the suppliers before they closed on 3 June 2022. His intention had to been to fit the chain on 7 June 2022. Mr Ross submitted that for this reason the installation was not negligent but incomplete, and the customer had been told not to use the appliance. Mr Ross submitted that moderate risk from the missing safety chain was overplayed as the customer would have no need to clean an appliance they had been told not to use. While the invoice stated the job was complete, Mr Ross submitted that Mr Still issued invoices in advance to ensure payment. Mr Ross therefore submitted there was nothing negligent or incompetent about the installation, rather, it was incomplete.

41. Charge two relating to Mr Still permitting an unauthorised person to do gasfitting. Mr Ross submitted that Mr Still was qualified to supervise and sign-off gasfitting work and it was due to an oversight that he had not renewed his practising certificate. He said the oversight was due to a personal tragedy Mr Still and his wife had suffered and the lack of licence was nothing more than a technical error.

42. With regard to charge three relating to Mr Still failing to issue a gas certificate, putting aside Mr Still's lack of a practising licence, Mr Ross submitted that Mr Still was qualified to do so. However, he submitted that Mr Still could not issue a certificate until he had done a final inspection, and this could only happen once the

installation was completed. This had not occurred, and Mr Ross submitted that Mr Still could not be penalised for not issuing a certificate for an installation that did not meet the requirements for being certified.

43. Mr Ross submitted that regardless of the fact of the connection to the gas supply, Mr Still's evidence was that Mr Gupta had been clearly told the job was incomplete and the appliance could not be used until it was completed. Mr Ross submitted that, if by some oversight the gas was connected, this was remedied when the gas meter was isolated. Finally, Mr Ross submitted that Mr Still had the ability to regularise the situation by immediately updating his practising licence or by having a licensed colleague inspect the work.

44. Mr Ross submitted that Mr Still's position was that it would have been wrong to certify an incomplete installation and this was worse than a brief period of the appliance being connected to the gas. With regard to why he did not certify the installation after the invoice was paid, Mr Ross submitted this was because the trespass order against Mr Still was not lifted as he had expected.

Summary of evidence – Chad Still

45. Mr Still then gave evidence. The Board considered Mr Still's evidence contained in a written statement dated 26 October 2023. Mr Still also gave evidence in person.

46. Mr Still stated that he is a registered and licensed certifying plumber and certifying gasfitter. He also holds a limited certificate as a trainee drainlayer. Mr Still is the sole director of his company. Mr Still stated he employed Mr McGrath as a trainee plumber and trainee gasfitter. He stated that Mr McGrath had more than two years of experience and he knew his previous employer. He stated he was not aware Mr McGrath did not hold a current authorisation.

47. Mr Still stated that on 3 June 2022, he received an urgent request for a gasfitting job at The Local. Mr Gupta required a new gas connection for a deep fryer. Mr Still stated it was just before Queen's Birthday weekend and he emphasised to Mr Gupta he could not guarantee completion of the job as suppliers closed at 4.30pm prior to the long week and this could affect his ability to obtain any parts required for the job. Mr Still stated he discussed his terms of trade with Mr Gupta and advised him that it would require a final inspection and certificate on completion. Mr Still stated he told Mr Gupta he would be invoiced for the full job through to final completion, and payment would be expected before the final inspection and certificate. Mr Still stated that he did not know precisely what the cost would be as he had not had a chance to inspect the site and assess what was required.

48. Mr Still stated that Mr McGrath did most of the installation, but the job could not be completed on 3 June 2022 because they were unable to obtain a safety chain needed to secure the installation on that day. Mr Still stated he explained to Mr Gupta they would have to return after the weekend to install the chain and conduct a final check and issue the certificate.

49. Mr Still stated that on the morning of 7 June 2023, he issued an invoice for the complete job and sent it to Mr Gupta. He stated he emphasised that while the invoice was for the complete job, it needed to be completed as he had described. Mr Still stated it was his practice to expect payment once the job was nearly complete and before the certificate was issued because some people will otherwise either delay payment or not pay at all.

50. Mr Still stated that when he went to the property on 7 June 2022, things became heated when Mr Gupta started challenging the invoice. Mr Gupta then trespassed him and he left the property. Mr Still told Mr Gupta he would remove their pipework and other components under a retention of title provision in his contract, but he did not do that. Instead, he isolated the gas meter and told Mr Gupta he would reconnect it when he was paid. Mr Still said that isolating the gas meter addressed any concern about the gas being connected before he could inspect the installation. Mr Still denied removing the gas meter.

51. Mr Still stated he did not get paid until 22 June 2022. However, the trespass order was not lifted. Mr Still stated he reconnected the gas meter and expected to be called to come back to finish the job, but this never happened.

52. Mr Still stated that Mr McGrath had sufficient experience to carry out the work and he himself was qualified to do the certification. Mr Still agreed that no gas certificate was issued, but stated this was because he was not prepared to issue one until the installation was fully compliant and had been inspected. He had intended to do this on 7 June 2022 but had been barred because of the dispute over the bill and had not been able to return to the property.

53. In response to questions from Ms Mok, Mr Still agreed that he had received an urgent call to install the fryer in a pub just before a long weekend. However, he could not say if the owner was wanting to use the fryer over the weekend. He said that they hadn't rung him until mid-afternoon on a Friday asking if he had a gasfitter available, and that they had been operating without the fryer up until then.

54. Ms Mok referred Mr Still to the email with his invoice to Mr Singh which showed it was sent at 8.55am on Tuesday, 7 June 2022. Ms Mok questioned whether Mr Still had gone to the property that day as he claimed, and he said he hadn't gone on that day. Ms Mok put it to Mr Still that it was 22 June 2022 when he had gone around to the property in response to concerns about non-payment of the invoice as this was the date shown on the CCTV footage inside the property. Mr Still stated that was at the end when he went around to reclaim his materials, but the dispute already existed by that time.

55. Ms Mok referred to Mr Still's oral evidence that steps had been taken on 3 June 2022 to isolate the gas to the fryer. Ms Mok put it to Mr Still that this was the first time he had claimed that, and it was not something he had said in any of his previous statements. Mr Still accepted that but said the past year had been very difficult for

him and he may not have remembered every detail of the job and what happened in the past. He said that this is what had happened. He said they would never have left the installation in an unsafe state. Mr Still said the whole matter was just an invoice dispute about a job that wasn't complete and that is why no certificate was issued for it. However, he did accept that he hadn't "paid his fee" for the year.

56. Ms Mok took Mr Still to the invoice his company had issued for the job and the narration on the invoice. She put it to Mr Still that the narration stated the installation was left in working order and there was no reference to Mr McGrath isolating the gas appliance. Mr Still accepted that but stated the job details were written by Mr McGrath and entered on the invoice by an administrative colleague. He said the invoice also didn't say he had done the final inspection or issued the certificate, which he wouldn't do until he had received payment.

57. Ms Mok put it to Mr Still that the appliance was connected to the gas supply on 3 June 2022 and wasn't isolated on that day. Mr Still did not accept this. He did accept that there was no mention on the invoice of the safety chain still needing to be installed, but said he could not check every invoice that was sent out. Referring to Mr Still's email on 16 June 2022 responding to Mr Gupta questioning the invoice, Ms Mok pointed out that it did not say anywhere that the job was incomplete and he needed to return.

58. Ms Mok referred Mr Still to the text exchange with Mr Singh on 22 June 2022 after he had isolated the gas supply at The Local. Ms Still confirmed he returned to the property the following day, on 23 June, and reinstated the gas supply because he had been paid by Mr Singh. Ms Mok put it to Mr Still he had done that despite knowing there was no safety chain on the fryer and knowing he had not had a chance to inspect and commission the installation. Mr Still accepted that but said he told them they would need to get someone else to come in and do that as he was trespassed and there was nothing else he could do. He did not accept it was his responsibility to arrange another gasfitter to go in and complete the work as he said he had already wasted so much time trying to get paid for the work he had already done.

59. Ms Mok put to Mr Still certain statements he made to the investigator during the investigation, where he initially referred to the installation as complete and had only mentioned the need for a safety chain after the investigator raised it with him. Mr Still responded that they were general comments and the installation was all but complete. Ms Mok also put to Mr Still that his claim in his written statement that he had isolated the gas supply wasn't true, rather he had isolated the supply so he would be paid. Mr Still disagreed and said it was also for safety reasons and because he was potentially liable. Ms Mok pointed out that Mr Still had left the gas connected for three weeks before he isolated it on 22 June 2022.

60. Ms Mok put it to Mr Still that he hadn't told Mr Gupta that the fryer could not be used on the Friday it was installed as he claimed. Mr Still said he had and that he would never leave the appliance unsafe.

61. Ms Mok questioned Mr Still about Mr McGrath. Mr Still agreed he had employed Mr McGrath in 2022 under his supervision and that, as his supervisor, he oversaw his work. He accepted he was responsible for ensuring Mr McGrath's work was done lawfully and his licences were up to date. Mr Still admitted he had not paid the licence fees but said that he had 13 years' experience and Mr McGrath had four so they were able to do the job. Mr Still said he got himself and Mr McGrath relicensed as soon as the matter was brought to his attention.

62. Mr Ross asked Mr Still how his invoices were generated and sent. Mr Still said they used the app Fergus, and the men would enter information about a job in the system and the office administrator would prepare the invoice based on that information. Mr Still stated he did not personally check the invoices before they were sent. Mr Still said he would have returned to the property to inspect and commission the appliance on the Tuesday afternoon or Wednesday morning if the dispute over the invoice had not arisen. Mr Still said there were other communications between himself and Mr Gupta but he did not have records of them because he had a new phone.

63. The Board questioned Mr Still about the reference on the invoice to the job being complete but not including any amount for him to return to the property and complete and certify the installation. Mr Still responded that the installation of the safety chain was minor, and the cost of certification was covered in the certificate cost. Mr Still said they had chain available and when asked why it was not used on 3 June 2022 to complete the installation, he responded that it had been 6pm at night when the job was finished, and he knew he was going to have to go back to inspect the installation.

Objection to Gupta evidence

64. Before proceeding to closing submissions, the Board asked Mr Ross whether he objected to the inclusion of Mr Gupta's evidence on the grounds that Mr Gupta had not appeared at the hearing.

65. Mr Ross submitted that he was gravely concerned about the reliability of Mr Gupta's evidence given it had not been tested by cross-examination and at least one aspect of it, the allegation of assault made to the police, appeared to be based on a falsity. Mr Ross submitted that there were significant differences between Mr Gupta's evidence and that of Mr Still and he objected to Mr Gupta's evidence being taken in the circumstances as he had assumed Mr Gupta would be available at the hearing.

66. In response, Ms Mok submitted that the Board had a signed statement from Mr Gupta in which he confirmed the truth and reliability of his statement. She submitted that no such evidence was available from Mr McGrath and so any evidence concerning Mr McGrath was hearsay evidence given by Mr Still during the hearing.

67. Ms Mok submitted that the question of whether or not Mr Gupta had been told not to use the fryer on Friday 3 June 2022 was not material to charge one as the fryer had been left connected to the gas supply. However, she submitted that Mr Gupta's evidence should still be considered by the Board because it was consistent with the objective evidence available including the CCTV footage and the invoice which aligned with the timings contained in Mr Gupta's statement.

Summary of investigator's closing submissions

68. Ms Mok began her closing submissions by addressing charge two. She submitted that Mr Still had accepted that Mr McGrath was unauthorised at the time he carried out the work at The Local. Ms Mok submitted that the conclusion on the charge was inescapable given the Board had before it evidence from the investigator showing Mr McGrath's did not obtain a gasfitting authorisation until September 2022.

69. Ms Mok submitted that the offence could not be characterised as a *de minimis* breach given Mr McGrath was an unauthorised person who had not previously held any form of authorisation to do gasfitting work. This meant that even when Mr McGrath did obtain his limited certificate in September 2022, he was required to work only in the direct presence of his supervisor Mr Still. Ms Mok submitted that the Board should therefore find charge two made out.

70. Turning to charge one, Ms Mok submitted that it was common ground that there was no safety chain installed on the appliance when one was required. Ms Mok submitted that Mr Wood's evidence, which was not contested, was that this meant the appliance was non-compliant and there was a risk of potential damage to the hose from the missing safety chain.

71. Ms Mok submitted that the key issue for the Board to determine was whether the gasfitting work was incomplete as Mr Still maintained, or whether it was complete for the purposes of the charge because it had been connected to the gas supply. Ms Mok submitted that it had to be the latter. Ms Mok submitted that Mr Still accepted that the safety chain had not been installed and that the appliance had been connected to the gas supply. This was clear from Mr Still's evidence that he had not gone back to the property and isolated the gas supply for some weeks after the appliance was installed.

72. Ms Mok submitted that it was not an answer to the charge that the missing safety chain meant the installation was incomplete and it was therefore not negligent or incompetent gasfitting. Again, Ms Mok submitted that the installation was connected to the gas supply and she referred to Mr Wood's evidence that if the installation was incomplete, it should never have been connected to the gas supply or have been left in a state where it could be connected to the gas supply.

73. Regarding the issue of whether the fryer was left connected to the gas supply, Ms Mok referred to the invoice for the work provided by Mr Still's company stating the appliance was left in "working order". She also referred to Mr Gupta's statement that he had been told the gas had been reconnected and he could start using the fryer

which they did that night. Ms Mok submitted that The Local was a busy bar and they would have wanted to be able to use their cooker. She referred to Mr Singh's evidence about their reaction to not being able to use their appliances when Mr Still turned the gas off on 22 June 2022. She submitted that it followed that they would not have gone three weeks without being able to use the new cooker and not have said anything to Mr Still about it.

74. Turning to the disputed police report, Ms Mok submitted that it was not material to the determination of the charges before the Board. Ms Mok submitted that the relevance of the police report arose from the date on which the altercation arose which was 22 June 2022 and this was consistent with Mr Gupta's account of the timing of these events as set out in his statement. With regard to the reference in the police letter to common assault, Ms Mok submitted this was a letter issued by the police and there was no evidence of what Mr Gupta's complaint to the police had actually been. She said, in the circumstances, the reference to an assault could not be used to impugn Mr Gupta's credibility or reliability as a witness.

75. Addressing the concerns about Mr Gupta's evidence given he had not appeared at the hearing, Ms Mok submitted that section 117 of the Act allowed the Board to receive any evidence it considered could assist it to deal with the matter before it. Ms Mok submitted that Mr Gupta's evidence should be accepted and should also be given moderate weight because it was consistent with the objective evidence in the case in the CCTV footage and the invoice. Ms Mok submitted that Mr Gupta's evidence in this regard was also consistent with the urgent request to have the fryer installed which clearly indicated they wished to use it. Even if they had been told not to use it, Ms Mok said it was left in a state where they could use it.

76. Ms Mok submitted that Mr Still's evidence during the hearing that Mr McGrath had turned off the gas supply at the appliance and told them not to use it should not be accepted. She submitted it was evidence from Mr Still and not Mr McGrath and it was something Mr Still had never claimed before the hearing in any of his accounts to the investigator. She submitted that it simply was not true. Ms Mok submitted that Mr Still only isolated the gas supply at the gas meter on 22 June 2022 when he went to the property to address the invoicing dispute, which was supported by the objective evidence in the CCTV footage.

77. Regarding charge three, Ms Mok submitted that Mr Still accepted he had not issued a certificate for the work. However, the issue was whether one was required in the circumstances. Ms Mok acknowledged that, practically, it was not possible for Mr Still to have gone to the property and inspected the installation himself after he was trespassed. However, she submitted there were other steps available to Mr Still including arranging for another certifying gasfitting to contact The Local given he was aware the appliance was being used and had not been certified. Ms Mok submitted that Mr Still should not have reconnected the gas supply on 23 June 2022 in circumstances where he knew the installation didn't have the required safety chain and it had not been inspected or certified.

78. Ms Mok submitted that regulation 52B of the GSMR made it clear that it was the point of connection to the supply that triggered the obligation to issue a gas safety certificate. She submitted that the assumption underlying that obligation is that the installation is complete because an incomplete installation should not be connected to the gas supply.

79. Ms Mok submitted that it was not clear even from Mr Still's evidence if Mr Gupta or Mr Singh had been made aware that certification of the installation was required. She submitted Mr Still said it was referred to at the very beginning of the job but he was dealing with lay people and it should have been reinforced that certification was required for the installation to be compliant.

Summary of Mr Still's closing submissions

80. Referring to charge three, Mr Ross submitted that Mr Still had no obligation to issue a gas safety certificate unless he was satisfied the installation was safe and the job was complete. Referring to regulation 52B(1), Mr Ross submitted that regulation requires a person to be satisfied that the installation is safe and complies with the GSMR and a person could not issue a certificate if they were not so satisfied. Mr Ross submitted that Mr Still could not issue a certificate in this case because he had been trespassed from the property and was not able to satisfy himself as to those things.

81. Mr Ross then addressed the investigator's submission that regulation 52B contemplated connection to the gas supply being the point of completion of an installation. Referring to subsection 2 of regulation 52B, Mr Ross submitted that while an installation was complete once it was connected or reconnected to the gas supply, it did not follow that this was the only thing that could connote completion. Mr Ross submitted that charge three therefore had no substance because Mr Still could not complete the installation.

82. Turning to the police report, Mr Ross submitted that the police are very familiar with what constitutes an assault. Intimidation is a separate offence and Mr Ross submitted that if that is what Mr Gupta had alleged to the police, that is what the police report would have said. Mr Ross submitted that Mr Gupta must therefore have alleged some form of assault by Mr Still and this was relevant because it went to Mr Gupta's veracity. Given that Mr Gupta had not appeared at the hearing, given sworn evidence, or been cross-examined, Mr Ross submitted that his evidence needed to be rejected where it conflicted with Mr Still's. He submitted that Mr Gupta's evidence as a whole needed to be given slight weight at best and possibly rejected in total.

83. With regard to charge one, Mr Ross submitted that the work was not negligent or incompetent, it was simply incomplete. Mr Ross submitted that it was Mr Still's evidence that Mr Gupta was informed that the installation was incomplete and he had been told not to use the cooker. The valve on the appliance had also been turned off isolating it from the gas supply. He submitted that the work being incomplete was a very different and distinct thing from it being negligent.

84. Mr Ross submitted that there was nothing about the installation that was negligent or incompetent. The only criticism was that it had been connected to the gas supply without a safety chain having been installed. Mr Ross submitted that safety chain could not be installed because Mr Still was prevented from returning to the property. He submitted that charge one must therefore fail.

85. Mr Ross submitted that with charge two, Mr Still had accepted that neither he nor Mr McGrath held current authorisations at the time the work was done. However, with regard to Mr McGrath, Mr Ross submitted that Mr Still did not know he was not authorised and had no way of verifying what his position was. Mr Still did know that Mr McGrath had been doing this work for four years which meant he had the years of experience he needed. As for Mr Still, he only had to pay the required fee in order to become licensed. Mr Ross submitted that the conduct was therefore *de minimis* and should only attract a nominal penalty.

Consideration of liability

86. The Board began by considering charge one and whether Mr Still had caused gasfitting to be carried out in a negligent or incompetent manner. The Board accepted, and these things were not in dispute, that Mr McGrath had gone to the property on 3 June 2022 and carried out gasfitting work relocating a gas pipe for a deep fryer. It was also not disputed that Mr Still had directed Mr McGrath to do this work and he carried out the work under Mr Still's supervision.

87. The Board accepted, and again it does not appear to have been in dispute, that a safety chain was required for the appliance and this was not installed by Mr McGrath on 3 June 2022. Accepting Mr Wood's evidence, the Board determined that this meant the installation did not comply with clause 6.2.14 of the mandatory gas installation AS/NZS 5601.1. The Board also accepted Mr Wood's evidence that the risk from the missing safety chain was that the hose to the fryer was vulnerable to damage and this had the potential to result in a gas leak.

88. The Board next considered whether the installation was merely incomplete, as submitted by Mr Still, or negligent or incompetent as submitted by the investigator. The Board notes that completeness is not a concept within s 89(a)(i), but it understands Mr Still's argument to be that negligence or incompetence must be assessed at the point a job is finished. The Board accepts this point in principle, and references to the concept of "completeness" for the purposes of charge one below should be understood on that basis.

89. The Board did not have the benefit of oral evidence from either Mr Gupta or Mr McGrath. However, the Board determined it would admit both Mr Gupta's witness statement and the aspects of Mr Still's evidence that repeat what he was told by Mr McGrath, recognising that – as discussed below – neither is required for determination of any independent proposition.

90. The Board is satisfied from the totality of the evidence, principally the invoice which the Board considers to be the best available evidence of what occurred, that the installation had been connected to the gas supply by Mr McGrath. The Board did not

understand Mr Still to dispute this. Rather he argued that Mr McGrath had isolated the appliance at the appliance valve and told Mr Gupta not to use it.

91. The Board concluded that for the purposes of determining whether or not the work was incomplete, it did not need to determine what Mr Gupta may or may not have been told on the evening of 3 June 2022. The key issue is whether the appliance had been connected to the gas supply. Whether or not the appliance had been "isolated" by Mr McGrath by turning off the appliance valve, the appliance was capable of being used. The Board agreed with the investigator that the installation must be treated as complete if it was left connected to the gas supply. If the installation was not finished it needed to be capped off or otherwise left in a state where it could not be connected to the gas supply and used.

92. The Board was not persuaded by Mr Still's argument that connection to the gas supply cannot equate to completion because connection may be necessary for testing and commissioning. It is leaving incomplete gasfitting in a state that can be used that may amount to negligence or incompetence.

93. Given the appliance was missing a safety chain when it was connected to the gas supply (and left able to be used), the installation was non-compliant and the manner of its installation was therefore negligent or incompetent. On this basis, the Board found charge one was made out.

94. With regard to charge two, Mr Still accepted both that he employed Mr McGrath and that he was not authorised at the time he carried out the work at The Local. It follows that charge two was therefore made out.

95. Mr Still gave evidence that he had seen Mr McGrath working for a number of years before he employed him and he was therefore satisfied that he had the required experience to do this job. Mr Still's position was that Mr McGrath's lack of an authorisation was a minor matter and simply involved him paying the fee for Mr McGrath to become authorised.

96. The investigator's position was that this was not a minor matter. Mr McGrath had never held any form of authorisation to do gasfitting work and when his authorisation was granted in September 2022, he was only authorised to carry out gasfitting work in the direct presence of Mr Still.

97. The Board accepted the investigator's position. Gasfitting is an occupation that is regulated because of the risk it presents to the public. It goes without saying that gasfitting performed incorrectly can be extremely dangerous. Mr McGrath lacked any recognised experience or training in carrying out gasfitting and the only authorisation a person in his position could hold was one that required him to work only in the direct presence of a certifying gasfitting for 12 or 24 months.

98. The Board did not accept that it was only a matter of paying the required fee for Mr McGrath to obtain his authorisation as submitted by Mr Still. For Mr McGrath to be issued with a limited certificate as a trainee gasfitter, he was required to be an enrolled gasfitting apprentice or otherwise be undergoing formal instruction or

training in gasfitting. He was also required to have a person who was registered and currently licensed who could be his supervisor.

99. Finally, the Board considered charge three. The Board had already determined that the installation was connected to the gas supply on 3 June 2022 for the purposes of the negligence and incompetence charge. Under regulation 52E of the GSMR, this meant that a gas safety certificate was required to be issued within 20 working days of that date. Mr Still accepted that he never issued such a certificate.

100. Mr Still's reasons for not issuing the gas safety certificate were that the installation was incomplete and he had no ability to issue the certificate because he remained trespassed from the property.

101. With regard to Mr Still's claim that the installation was incomplete and therefore the obligation to issue a gas safety certificate never arose, the Board had already found that the installation was complete because it was connected to the gas supply. The Board accepted and agreed with the investigator's submission that if the installation was complete under regulation 52B(2) of the GSMR, then the obligation to issue a gas safety certificate under regulation 52E had arisen.

102. The Board next considered Mr Still's claim that he was unable to issue a gas safety certificate for the installation because he had been trespassed from the property and had no way of making the installation compliant and doing the final inspection needed in order for him to issue the certificate. The Board accepted the investigator's submission that there were steps Mr Still could and should have taken to discharge his certification responsibility even if he was not able to certify the installation himself. This appears to have been something that was accepted by Mr Still whose opening submissions stated he had the ability to regularise his failure to issue a certificate by having the work inspected by a colleague who held a current licence.

103. The Board considered that, at the very least, Mr Still should not have reinstated the gas supply on 23 June 2022 when he returned to The Local following payment of his invoice. Mr Still knew the installation lacked a safety chain and was non-compliant, and had not been inspected, commissioned, or certified. The Board considered that Mr Still's actions in reconnecting the gas supply in those circumstanced compounded his failure to make arrangements for the certification of the appliance and was behaviour that fell well below the standard expected of a certifying gasfitter with his years of experience.

104. The Board determined that charge three was made out.

Decision of the Board

105. The Board found Mr Still:

    a. guilty of causing gasfitting to be carried out in a negligent or incompetent manner (charge one)

b. guilty of employing, directing, or permitting an unauthorised person to do gasfitting (charge two)

c. guilty of failing to issue a return required under an enactment relating to gasfitting (charge three).

106. The Board will consider the question of penalty after hearing from the parties.

Appeal

107. If Mr Still is dissatisfied with the whole or any part of this decision, 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 May 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board