Plumbers, Gasfitters and Drainlayers Board

PIDGEON v WHITEHEAD

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/16)

Summary

Stephen Whitehead, Certifying Gasfitter, faced two charges of failing to comply with a term or condition of his registration or licence in relation to the supervision of a trainee gasfitter. The trainee carried out gasfitting work at a residential premise and in a caravan without any supervision from Mr Whitehead. The work in both cases was non-compliant and in one case the trainee falsely issued a gas certificate in Mr Whitehead's name.

Mr Whitehead pleaded guilty to the charges.

The Board considered Mr Whitehead's offending was moderately serious. Mr Whitehead had misunderstood his supervision obligations and, because of this, had not had proper systems and processes in place to supervise the trainee. The Board found there were no aggravating factors in the case and Mr Whitehead was entitled to credit for his guilty plea and lack of any previous disciplinary offending. The Board also recognised that Mr Whitehead had removed his supervision once he learnt of the complaint and had changed his practices so that the mistake would not be repeated.

The Board ordered Mr Whitehead to pay a fine of $3,375 and pay $12,700 towards costs.

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

BETWEEN **MICHAEL PIDGEON**

Investigator

AND **STEPHEN JOHN WHITEHEAD**
Certifying Gasfitter of Whangārei

Registered Person

DECISION OF THE BOARD
16 August 2024

Hearing:	Held on the papers on 24 July 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Martin de Gouw, Deborah Cranko, James Smith, Beth Healy
Counsel:	Natanahira Herewini for the investigator Mr Whitehead was self-represented
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 24 July 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider complaints by Yvonne van Beek and Max Robertson against Stephen Whitehead, Certifying Gasfitter. Both complaints related to gasfitting work carried out by a supervisee of Mr Whitehead. Ms van Beek's complaint related to gasfitting carried out at a residential property in Whangārei and Mr Robertson's complaint related to gasfitting carried out on a caravan.

Guilty plea

2. On 11 April 2024, Mr Whitehead pleaded guilty to two charges of failing to comply with a term or condition of his registration or licence in relation to supervision and signed an agreed summary of facts, the material parts of which were as follows:

Ms van Beek's complaint

a. Ms van Beek was the interim property manager for a property in Whangārei. In July 2022, she contracted Lyall Fiebiger to install a new continuous flow water heater at the property.

b. On 29 September 2022, Ms van Beek received a gas certificate for the work purportedly signed by Mr Whitehead. Ms van Beek subsequently made enquiries about Mr Fiebiger on the Board's public register which showed that he was a trainee. Ms van Beek then made a complaint to the Board.

c. A technical assessment of the work Mr Fiebiger carried out revealed that:

   i. the flue terminal had been installed with the wrong clearances for the water heater

   ii. the isolating valve was not installed directly after the auto changeover regulator

   iii. there was no test point installed in the pipework after the isolation valve adjacent to the auto changeover regulator to allow the work to be tested and commissioned

   iv. no condensate tailpipe was installed directly after the auto changeover regulator.

d. The defects with the work were assessed as posing a moderate risk of harm and Ms van Beek was advised not to connect the water heater to the gas supply until remedial work had been carried out.

e. At the relevant time. Mr Fiebiger was a trainee gasfitter under the supervision of Mr Whitehead. Mr Fiebiger did not require direct presence supervision from Mr Whitehead when carrying out gasfitting. However, under the Plumbers, Gasfitters, and Drainlayer Board (Gasfitting Registration and Licensing) Notice 2016 (**Notice**), Mr Whitehead was responsible for ensuring Mr Fiebiger's work was carried out competently, that appropriate safety measures were in place when he did gasfitting, and that the work complied with the Gas (Safety and Measurement) Regulations 2010 (**Regulations**).

f. Mr Whitehead was not aware that Mr Fiebiger had carried out the gasfitting work for Ms van Beek so did not provide him with any supervision for this job. Mr Whitehead incorrectly believed he was Mr Fiebiger's supervisor for training purposes at Unitec only. Because of this, Mr Whitehead was not in a position to ensure the work Mr Fiebiger carried out for Ms van Beek was carried out competently, safely, and compliantly.

g. Because Mr Whitehead had no knowledge of the work Mr Fiebiger had carried out for Ms van Beek he had not issued the certificate.

Mr Robertson's complaint

h. On 19 October 2022, Mr Robertson engaged Mr Fiebiger to carry out gasfitting work on his caravan. The work involved replacing fittings on gas appliances in the caravan.

i. After the work was completed, Mr Fiebiger did not respond to follow-up correspondence from Mr Robertson, so he checked his details on the Board's public register and found Mr Fiebiger was only a trainee. Mr Robertson subsequently made a complaint to the Board.

j. A technical assessment of the work carried out by Mr Fiebiger on the caravan identified the following issues:

    i. there was no isolating valve installed in the piping system to isolate the pipework downstream of the valve from the gas supply

    ii. the regulator was not securely restrained as the bottle was not secure and this could have caused undue stress on the cylinder valve.

    iii. advised that the original owner had never spoken to him.

k. The work was assessed as posing a moderate risk of harm.

l. Mr Whitehead was Mr Fiebiger's supervisor when he carried out the work for Mr Robertson. As with Ms van Beek's complaint, Mr Whitehead believed he was only supervising Mr Fiebiger for training purposes and was not aware he had carried

out the work for Mr Robertson. Accordingly, Mr Whitehead did not provide Mr Fiebiger with any supervision for this job.

m. Mr Whitehead told the investigator that his working relationship with Mr Fiebiger had ended in 2021 and he had only remained his supervisor so Mr Fiebiger could complete his six-year apprenticeship. Mr Whitehead now understands the Board does not recognise supervision for training purposes only.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Whitehead had committed disciplinary offences under section 89(c) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Mr Herewini submitted that Mr Whitehead's conduct was moderately serious. Mr Whitehead had accepted that he had failed to supervise Mr Fiebiger, a trainee gasfitter, carrying out gasfitting work on two occasions. Mr Herewini submitted that Mr Whitehead should have supervised Mr Fiebiger or ensured that another suitably qualified person did so while he carried out this work. Mr Whitehead had not been aware of either job Mr Fiebiger had carried out and Mr Herewini submitted that this was because he did not have any supervision systems or processes in place to monitor Mr Fiebiger and the gasfitting work he was doing. This was contrary to his supervision obligations under the Notice.

5. Mr Herewini submitted that the appropriate penalty in this case was a fine with a starting point in the vicinity of $4,000 to $4,500. Mr Herewini submitted that the risk of non-compliant work in this case was higher as it involved a trainee carrying out gasfitting without any supervision and that risk had been realised in this case as there had been issues with the work on both occasions. Mr Whitehead had also contended throughout the disciplinary process that his supervision obligations were limited to signing off work carried out by Mr Fiebiger at Unitec and Mr Herewini submitted that this demonstrated a fundamental misunderstanding on Mr Whitehead's part as to his obligations as a supervisor.

6. Mr Herewini submitted that the penalty sought in this case was broadly consistent with that previously imposed by the Board in similar cases such as *Radovich v Sen* (2020/31) and *Radovich v Yan* (2023/1). In the *Sen* case, the Board adopted a starting point for the fine of $4,000 where Mr Sen had failed to supervise a supervisee working under exemptions doing sanitary plumbing and drainlaying. There had been multiple defects with the work that had posed a serious risk. Similarly, in *Yan*, a starting point fine of $2,500 was adopted for a failure to supervise a trainee plumber installing a hot water cylinder. There had been no issues with the work in that case. Mr Herewini submitted that, as with Mr Whitehead, in both of these cases the supervisors had been unaware that their supervisees had carried out the work because they did not have appropriate supervision systems and processes in place.

7. Mr Herewini submitted that a higher starting point was justified in this case because it involved unsupervised gasfitting work on two separate occasions over a period of three months. There had also been defects with the work on both occasions. Mr Herewini submitted that an order that Mr Whitehead complete training or education was also important in this case to assist him to understand his supervision obligations to mitigate the risk of similar conduct in the future.

8. Mr Herewini submitted that the investigator was not aware of any aggravating factors in Mr Whitehead's case. He acknowledged that Mr Whitehead had no previous disciplinary history and this was a mitigating factor in his favour. Mr Herewini also acknowledged that Mr Whitehead had pleaded guilty to the charges but submitted that this had been at a late stage after the investigator had filed evidence to support the charges so limited credit was available to him for this factor.

9. Mr Herewini submitted that under section 107 of the Act, the Board could require Mr Whitehead to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. He submitted that a small reduction from the usual starting point of half of the costs may be considered appropriate to reflect Mr Whitehead's acceptance of the charges. He submitted that ultimately the level of costs to be ordered was a matter for the Board to determine in its discretion.

10. In his submissions on penalty, Mr Whitehead submitted that he had been assisting several apprentices since 2017. He submitted that there had been an agreement between himself, Skills, the apprentices and the companies that employed the apprentices. However, he submitted that the agreement had been for while the apprentices were at Unitec only.

11. Mr Whitehead submitted that Mr Fiebiger's apprenticeship had become a "logistical nightmare" due to the pandemic, work restrictions, and polytechnics closing. In late 2021, he submitted that his company had ceased trading and his agreement with Mr Fiebiger had been to continue to supervise him while he was at Unitec only, as with the other apprentices he supervised in this way.

12. Mr Whitehead submitted that he was never paid any money for supervising Mr Fiebiger or any of the apprentices, either from the apprentices themselves or the companies employing them. He said he had simply agreed to be the apprentices' supervisor to assist them.

13. Mr Whitehead submitted that any penalty in this case should be minimal. He had not been aware of the jobs Mr Fiebiger had carried out and had not received any payment for either of them. With regard to the gas certificate Mr Fiebiger had given Ms van Beek, Mr Whitehead said his signature had been used illegally.

14. Mr Whitehead submitted that there had been no meeting between himself, Mr Fiebiger and the investigator to discuss the nature of the relationship between himself and Mr Fiebiger. He submitted that the investigator had sent two emails to

Mr Fiebiger and had two telephone calls with him, and that was all the investigation that had been carried out. Mr Whitehead submitted that "once it became clear what was going on I removed my name from supervision of all apprentices".

15. Mr Whitehead submitted that since February 2023 when the incident was reported, he had been upfront and honest about his association with Mr Fiebiger and the other apprentices. He rejected the investigator's submission that he had delayed his guilty plea and submitted that since March 2022 he had submitted numerous emails asking what his contractual obligations were in relation to the apprentices. He submitted that he had sent emails to the Board, the Registrar, the investigator, Mr Herewini, Skills, and the instructors at Unitec. He submitted that no information had been forthcoming in response to his requests and it was not until March 2024 that Mr Herewini advised him there was no such thing as supervision for the purposes of training at a training institute. He submitted that if he had been told this earlier, he would have pleaded guilty earlier.

16. Mr Whitehead submitted that he had trained over 12 apprentices over the years and listed the things he had trained them in. He submitted that they had gone on to gain their registration and, from there, become company owners, area managers with gas retail companies, or even instructors at Unitec.

17. Mr Whitehead submitted that he believed he was receiving correct information from the Board and Skills about supervising apprentices since 2017. He advised he would not be assisting any more companies in Northland and would not be training or supervising any more apprentices. He stated he had advised the Board of this. In the circumstances, he submitted that training on his supervision responsibilities was not warranted.

18. Mr Whitehead ended by apologising to the Board for the way in which his statement had been submitted. He submitted that he did not take the charges lightly and had put steps in place to ensure it would not happen again. He submitted that he had not received any legal advice in relation to any of his emails or statements relating to the charges against him.

Decision on penalty

19. 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 to 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.

20. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Whitehead's offending was moderately serious. The Board accepted that Mr Whitehead believed he was supervising Mr Fiebiger for training

purposes only and therefore did not have appropriate supervision systems and processes in place to supervise him carrying out gasfitting work outside of Unitec. However, the Board accepted the investigator's submission that this represented a fundamental misunderstanding on Mr Whitehead's part as to his supervision responsibilities. A supervisor's supervision obligations are clearly set out in the Board's registration and licensing notices, and limited or restricted forms of supervision have never been permitted. In addition, supervision as a topic had been covered numerous times since 2016 in the Board's continuing professional development programme which Mr Whitehead would have had to complete each year. In the circumstances, the Board considered it was concerning that Mr Whitehead continued to believe he could supervise apprentices for training purposes only.

21. The Board found there were no aggravating factors in the case and Mr Whitehead's guilty plea, albeit later in proceedings, and lack of previous disciplinary offending were mitigating factors in his favour. The Board also accepted that Mr Whitehead had removed Mr Fiebiger and the other apprentices from his supervision upon learning he could not supervise them for their Unitec work only and had said he would no longer supervise others.

22. The Board considered that a fine was an appropriate penalty in this case and determined that the starting point should be $4,500. In recognition of the mitigating factors in Mr Whitehead's favour, the Board reduced the fine to $3,375.

23. The Board determined that it would not impose a training order in this case as supervision had been covered in the continuing professional development programme.

Costs

24. 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 investigation, prosecution and hearing amounting to $28,421.20.

25. The Board accepted that Mr Whitehead's guilty had avoided the costs of a full hearing and determined that he should pay $12,700 towards costs which was around 45% of the total costs.

Publication

26. In accordance with the requirements of the Act, the Board ordered that details of the action taken against Mr Whitehead should be recorded on the register of plumbers, gasfitters, and drainlayers in the usual way. Any other publication of the Board's

orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

27. Being satisfied that Mr Whitehead was guilty of disciplinary offences under section 89(c) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Whitehead pay a fine of $3,375.

    b. Pursuant to section 107 of the Act, Mr Whitehead pay $12,700 towards the costs of the investigation, prosecution, and hearing.

    c. Pursuant to section 74(1)(c)(viii) of the Act, details of the Board's orders in respect of Mr Whitehead be published on the register.

Appeal

28. If Mr Whitehead 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 16 August 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board