Plumbers, Gasfitters and Drainlayers Board

RADOVICH v HARDY

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/20)

Summary

Bryce Hardy, Certifying Plumber, Tradesman Gasfitter, was charged with causing sanitary plumbing to be carried out in a negligent or incompetent manner and employing, directing, or permitting an unauthorised person to carry out sanitary plumbing. The charges related to sanitary plumbing work carried out at a property in Christchurch/Ōtautahi in 2022.

Mr Hardy pleaded guilty to the charge of employing, directing, or permitting an unauthorised person to carry out sanitary plumbing but defended the charge of causing negligent or incompetent sanitary plumbing.

The investigator's case was that when Mr Hardy and an employee of his company installed a toilet at the property, they sealed the pan connector to the toilet using silicone and black PVC tape, installed the new pan connector into an existing pan connector using silicone rather than installing the pan connector outlet runner, had failed to install the threaded rod and base plate required to fix the new pan connector to the wall, and that any or all of these issues had caused the toilet to leak meaning it did not comply with the requirements of the New Zealand Building Code.

Mr Hardy's defence was that lubricant and not silicone had been used on the connection of the pan connector to the toilet and the black tape had been used only to strengthen the outlet washer on the connector. It was also his position that installing the new pan connector into the existing multi fit pan connector complied with the Building Code, the threaded rod and base plate had been installed, and that the leak from the toilet was the result of blockages in the aged and damaged drains at the property which the homeowner did not want to replace at the time he carried out the sanitary plumbing work at the property.

The Board determined that the installation of the new pan connector into the existing multi fit which was aged and likely degraded was negligent or incompetent and had likely caused the toilet to leak when water build up from the drain blocking put increased pressure on the seal. The Board determined that the aspects of the charge relating to the use of silicone

and black tape to seal the new pan connector to the toilet and silicone rather than the pan connector outlet runner were not made out.

The Board considered that Mr Hardy's offending was moderately serious. There were no aggravating factors in his case and he was entitled to credit for his cooperation, acceptance of one charge, and his lack of any previous disciplinary offending.

Mr Hardy was fined $2,800 and ordered to pay $18,600 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 **BRYCE WILLIAM HARDY**
Certifying Plumber, Tradesman Gasfitter, of Christchurch/Ōtautahi

Registered Person

DECISION OF THE BOARD
10 FEBRUARY 2025

Hearing:	Held In Wellington/Te Whanganui-a-Tara on 4 September 2024 and 18 November 2024
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Beth Healy, Selwyn Hikuroa, Sue Simons
Counsel:	Elena Mok for the investigator Sarah Eglinton for Mr Hardy
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 4 September 2024 and 18 November 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Carolyn Robertson against Bryce Hardy, Certifying Plumber, Tradesman Gasfitter.

Charges

2. By Notice of Disciplinary Charges dated 3 April 2024, Mr Hardy was charged with the following offences:

    a. causing sanitary plumbing 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 unauthorised persons to carry out sanitary plumbing, which is a disciplinary offence under section 89(e) of the Act (**charge two**).

Guilty plea

3. On 21 June 2024, Mr Hardy pleaded guilty to charge two. Charge one was defended.

Leave to amend charge one

4. On 21 August 2024, on behalf of the investigator Ms Mok sought leave to amend charge one. The particulars of charge one were that it was alleged that the sanitary plumbing involving the toilet was negligent or incompetent because:

    a. no proprietary plastic covering was installed to seal the pan connector to the pan. The connector was instead installed using silicone and black PVC tape

    b. the new pan connector outlet runner was not installed and an existing pan connector was used instead which was connected using silicone

    c. these issues caused the toilet to leak and meant the sanitary plumbing work did not comply with G13.3.1 of the New Zealand Building Code (**Code**).

5. Ms Mok submitted that, having received Mr Hardy's evidence and on the basis of new information sought by the investigator in the course of preparing reply evidence, the investigator now sought leave to amend the particulars of charge one.

6. Ms Mok submitted that Mr Hardy had stated for the first time in his evidence filed on 8 August 2024 that the pan connector used in this case was the Elementi 15020.10 (**Elementi**) which did not require a proprietary plastic covering. For that reason, he claimed that the work was not negligent or incompetent because of the lack of a plastic covering. Ms Mok submitted that further enquiries with the remedial plumber

had confirmed that the pan connector used was likely to have been the Elementi and the investigator accepted that it did not require a plastic covering.

7. Having identified the type of pan connector used, Ms Mok submitted that the investigator's technical advisor, Hamish Alexander, had provided further technical information regarding the installation requirements for this pan connector including that a threaded rod and base plate was required to be screwed to the wall to fix the pan connector in place and ensure it complied with the Code. The remedial plumber's evidence was that no such rod and base plate had been installed fixing the pan to the wall and the investigator's position was that the installation was therefore negligent or incompetent for this reason.

8. Ms Mok submitted that the investigator therefore sought leave to amend charge one by removing the reference to the alleged failure to install a proprietary plastic covering and add a particular to address the alleged failure to affix the pan connector to the wall using the threaded rod and base plate. Ms Mok submitted that the relevant particulars of charge one would now read:

    a. the new pan connector was sealed using silicone and black PVC tape

    b. the new pan connector outlet runner was not installed and the existing pan connector was used instead which was connected with silicone

    c. the new pan connector was not fixed to the wall using the required threaded rod and base plate

    d. any or all of these issues caused the toilet to leak and meant the sanitary plumbing work did not comply with clause G13.3.1 of the Code.

9. Ms Mok submitted that leave should be granted to amend charge one as the key allegation against Mr Hardy remained the same. She also submitted that the amendments resulted from new information provided by Mr Hardy as part of his evidence for the hearing and was not made available during the investigation or prior to the charges being laid. In addition, the remedial plumber had previously indicated the pan connector was not fixed to the wall so that information was not new. In the circumstances, Ms Mok submitted that the amendments sought did not unfairly prejudice Mr Hardy.

10. On behalf of Mr Hardy, Ms Eglinton had no objection to the amendments sought.

11. Having considered the investigator's submissions and there being no objection from Mr Hardy, the Board granted leave to amend the particulars of charge one as sought.

Summary of opening submissions for investigator

12. Ms Mok submitted that Mr Hardy admitted charge one of employing, directing or permitting unauthorised people to carry out sanitary plumbing. He accepted that

between March and July 2022, employees of his company had carried out sanitary plumbing work at Ms Robertson's property involving the installation of fittings and associated pipework for a toilet, basins, shower, bath, and laundry. While one of those employees was a registered certifying plumber, he did not hold a current practising licence at the time. The second employee had never held any form of authorisation allowing him to carry out sanitary plumbing.

13. Under section 8 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**), only licensed or authorised people may do or assist with plumbing work. Given that neither of Mr Hardy's employees were licensed or authorised, Ms Mok submitted that the Board could be satisfied that he was guilty of charge two.

14. Ms Mok submitted that Mr Hardy denied charge one of causing sanitary plumbing work to be carried out in a negligent or incompetent manner. She submitted that he accepted that the work was sanitary plumbing and that he caused it to be done as he had carried out the work along with one of his employees who was under his control and direction. However, Ms Mok submitted that Mr Hardy did not accept that the work had been carried out in a negligent or incompetent manner.

15. Ms Mok submitted that the work that was alleged to be negligent or incompetent was the installation of a toilet. Mrs Roberton noticed that the toilet filled up with water due to a blockage and was leaking between the toilet bowl and the floor whenever the toilet was flushed. Attempts by her husband to contact Mr Hardy's company to remediate the work were unsuccessful and another plumber was subsequently engaged to carry out emergency remedial work.

16. The remedial plumber identified several issues with the work including that the new pan connector was not fixed to the wall, was siliconed into an old pan connector and waste pipe which was blocked, and was taped to the pan outlet using black PVC tape. Mr Mok submitted that the Board's technical advisor, Mr Alexander, considered this meant the manner of installation of the toilet did not meet the requirements of G13.3.1 of the New Zealand Building Code (**Code**) which requires plumbing systems to be constructed to avoid the likelihood of blockage and leakage. Ms Mok submitted that this demonstrated that the work was negligent or incompetent.

17. Mr Hardy had stated that the pan connector used was an Elementi which had Watermark approval. He had stated that it was "likely" installed in the existing pan connector and that this was a compliant installation technique. This view was supported by Mr Day, an expert engaged by Mr Hardy, who considered this technique was complaint if the second connector was 100mm in diameter. Mr Alexander considered that this technique would only be compliant if the connector was installed in an existing 100mm PVC-U pipe or other material referenced in Table 1 in G13 AS1 which was not the case here. This meant the connection did not comply with the Watermark certificate and installation requirements making it non-compliant.

18. With regard to the alleged failure to fix the pan connector to the wall, Ms Mok submitted that the available evidence supported this not having been done. In Mr Alexander's view, the failure to take this step risked the pan connector tipping back at an angle which would mean the rubber would not seal at the inlet and outlet of the pan. This would likely cause a leak, contrary to clause G13.3.1 of the Code and Ms Mok submitted that it was Mr Alexander's opinion that this was the probable cause of the leak with the installation at Mrs Robertson's property.

19. Finally, with regard to the used of black PVC tape and silicone to connect the pan connector, Ms Mok submitted that Mr Hardy had stated that the black tape was used to provide "strength" and was not used in place of the cistern washer itself. Mr Day's opinion was that the use of tape was appropriate as additional reinforcing. However, Mr Alexander's view was that black tape was not appropriate for use in this way as it would become loose in water and lubricant was sufficient to allow a smooth fit. It was also Mr Alexander's opinion that the use of silicone to connect the rubber gasket to the pan was contrary to the manufacturer's instructions, making it non-compliant with the Watermark approval and therefore the Code.

20. Ms Mok submitted that the evidence of the investigator's witnesses would establish that, on the balance of probabilities, Mr Hardy was guilty of charge one.

Summary of evidence – Carolyn Robertson

21. The first witness for the investigator was Mrs Robertson. The Board considered Mrs Robertson's evidence contained in a written statement dated 14 August 2024. Mrs Robertson also gave evidence at the hearing via audio visual link.

22. Mrs Robertson stated that she was the owner of the property and had engaged Mr Hardy's company to carry out sanitary plumbing work as part of wider renovations undertaken at the property. Mrs Robertson described the sanitary plumbing work that had been carried out and the people from Mr Hardy's company who had undertaken the work. With regard to the toilet, Mrs Roberston stated that the original toilet had been removed to allow new skirting boards and wall linings to be installed before the toilet was fitted again and that this happened in June 2022. Mrs Robertson stated that the renovations were complete and she moved into the property on 9 November 2022.

23. Mrs Robertson stated that on 11 November 2022, the toilet Mr Hardy's employee had installed was filling up with water due to a blockage and water was leaking between the toilet bowl and the floor each time it was flushed. Her husband was unable to reach Mr Hardy's company and they did not return their messages so the engaged a plumber from another company, Jason Williams, to carry out emergency remedial work during which he identified several issues with the work. Mrs Robertson subsequently made a complaint to the Board in February 2023.

24. Mrs Robertson advised that at the time of her written statement she had lived at the property for nearly two years. She had not replaced any drains at the property and had only experienced one further blockage which they had cleared themselves. She stated that the toilet had not leaked since the work carried out by the remedial plumber.

25. Responding to statements in Mr Hardy's brief of evidence, Mrs Robertson stated that:

    a. EQC had undertaken repairs to the drains under the house before she purchased the property.

    b. They never intended to subdivide the property as it was too small but they did have the idea to build a minor dwelling at the back of the property at some point in the future.

    c. She did not recall Mr Hardy recommending that the drains and underfloor wastes be replaced before the sanitary plumbing work was carried out. It was her understanding that any damage to the drains had been repaired by EQC. She did recall the builder asking her if she wanted to replace the drains but she declined as they had already been repaired.

    d. She did not recall Mr Hardy telling her no one should live at the property until the drainage work was completed. She stated that if the drains had needed urgent repairs she would have agreed to the work being done, especially if she had been told the drains would make the house uninhabitable.

    e. She was never told that the toilet would block when Mr Hardy's employees were on site or that Mr Hardy was required to clear any blockages.

26. In cross examination, Ms Eglinton referred Mrs Robertson to the remedial plumber's evidence relating to outstanding issues with the drain for the toilet and asked whether she ever fixed the drain. Mrs Robertson responded that she had been present with the remedial plumber when he had scoped the drain and found the dent and they had had a discussion about it at the time. She stated that as the drain was under a newly built deck which would have to be removed in order to replace the drain, they decided to wait and see whether the dent in the drain would be enough to keep causing blockages. She stated there had been one small blockage in March 2023 which had been easily cleared by her husband using a clearing rod but no further issues since then.

Summary of evidence – Jason Williams

27. The next witness for the investigator was Jason Williams. The Board considered Mr Williams' evidence contained in written statements dated 9 July 2024 and 23 August 2024. Mr Williams also gave evidence at the hearing via audio visual link.

28. Mr Williams stated that he was a trainee plumber, gasfitter, and drainlayer who was employed by a plumbing company. In November 2022 he attended Mrs Robertson's property to inspect and repair a leaking toilet. He stated the issues he found with the toilet were that the goose neck pan connected was not fixed to the wall and was siliconed into an old Caroma universal which was, in turn, siliconed into a lead waste pipe that was blocked. In addition, the goose pan connector did not have the plastic ring which sits over the black rubber seal to ensure it doesn't move or leak. Instead it was taped on to the pan outlet with black tape.

29. Mr Williams stated that after he removed the toilet, he told Mrs Robertson he would need to completely reinstall the toilet and inspect the drain while the toilet was not in place. When he inspected the drain he found a paper blockage which he cleared with a plunger. He also jetted the drain line to clear any other debris. He advised Mrs Robertson there were outstanding issues with the drain and additional work would be required. When he reinstalled the toilet, he stated he removed the old universal pan connector and installed a new gooseneck pan connector directly on to the lead upstand and fixed it to the wall in accordance with the instructions.

30. In his second written statement, Mr Williams stated that the pan connector that appeared to have been installed on Mrs Roberston's toilet was an Elementi 15021.10. He stated no threaded rod or base plate had been installed to fix the pan connector to the wall. He then clarified that when he carried out the remedial work on the toilet, he had put an earthenware to PVC adaptor into the lead upstand and then glued a 100mm PVC pipe to the inside and fitted the new gooseneck connector.

31. In cross examination, Ms Eglinton clarified that Mr Williams' supervisor had not been present when he had carried out the work at Mrs Robertson's. Mr Williams advised that this was not a concern for him as he had been in his third year of his apprenticeship by then. Ms Eglinton questioned Mr Williams about his experience with the Elementi and he advised that he had installed many pan connectors in his work including goose neck pan connectors.

32. Ms Eglinton put it to Mr Williams that the pan connector at Mrs Robertson's must have been fixed otherwise it would not have been possible for Mr Hardy's employee to install the toilet given the connector would likely tilt if not fixed. Mr Williams did not agree saying there wasn't a rod and fixing plate there and a rod could not have been installed given Mr Hardy's evidence that a layer of black insulation tape would have been put around the inlet including the washer. Ms Eglinton put it to Mr Williams that the black tape was only on the connector and not the toilet but Mr Williams referred to his job notes from the day where he had recorded that pan connector was sealed on to the toilet using black tape. He also advised that the black tape had been sealed to the toilet when he had removed it and he had shown that to the customer.

33. Ms Eglinton took Mr Williams through the invoices and call out sheet attached to his statements and put it to him that none of these documents stated that the pan

connector was not fixed to the wall. Mr Williams accepted that this was the case and that, if it was important, it is something that should have been recorded. Mr Williams accepted that he did not mention it until two years after he carried out the work when he was asked to provide a statement. When Ms Eglinton put it to him that it could have been there, he responded that it was his recollection that it wasn't.

34. Ms Eglinton questioned Mr Williams about the photos he had taken of the toilet and the different appearance of the floor in the photos. Mr Williams accepted the flooring looked different and was not able to explain why. When asked if one of the photos may not have been of the lead pipe at Mrs Robertson's, he was unable to say given how long ago the work had been carried out. Mr Williams stated that one of the photos was definitely one he had taken at Mrs Robertson's but could not confirm that the second one definitely was.

35. Ms Eglinton asked Mr Williams about his statement that he told Mrs Robertson there were outstanding issues with the drain and that additional work would be required to fix the toilet. Mr Williams clarified that the reference to additional work related to the drain which was not in good condition and that no further work was required on the toilet. Mr Williams said he was unable to say what was wrong with the drain other than seeing an irregularity when he put the camera down. Mr Williams agreed that a drain that blocks and backs up can cause problems for a toilet and can cause leaks if the toilet is not sealed. He did not agree that the toilet backing up could put pressure on seals and cause them to leak saying this would not happen in a single storey building.

36. Mr Williams accepted in response to Ms Eglinton's questioning that his recollection of the work he carried out at Mrs Robertson's was limited given the time that had passed since he carried out the work and the many jobs he had done since. He advised that his job notes written at the time he carried out the work were the most reliable source of information about exactly what he had done.

37. In response to questions from the Board, Mr Williams stated the leak from the toilet could have been from either where the toilet sealed to the pan connector or where the new pan connector was siliconed into the old one. He considered the latter was more likely. He agreed that for the toilet to have been installed taped on to the connector, the toilet and pan connector would have had to have been dropped on to the upstand rather than the connector being installed on the upstand and the toilet being pushed into the connector. Mr Williams said he removed the toilet by pulling it forward, not up, but could not recall if the pan connector was attached to the toilet when he removed it.

Summary of evidence – Hamish Alexander

38. The third witness for the investigator was Hamish Alexander. The Board considered Mr Alexander's evidence contained in written statements dated 1 July 2024 and 23 August 2024. Mr Alexander also gave evidence at the hearing via audio visual link.

39. Mr Alexander is a registered and licensed certifying plumber, certifying gasfitter, and certifying drainlayer. He provides technical advice to the Board on a contract basis. In that capacity, Mr Alexander provided a technical assessment as part of the investigation into Mrs Robertson's complaint. In that assessment, Mr Alexander was of the opinion that:

    a. the work carried out by Mr Hardy's employees was sanitary plumbing under section 6 of the Act as it involved the installation of a sanitary fixture

    b. the joins and materials used to connect the pan connector to the foul water plumbing system did not comply with the requirements of G13 of the Code

    c. as a consequence of how the toilet was installed, when a blockage occurred within the existing foul water plumbing system it flooded all of the connections and the toilet leaked between the toilet outlet and pan connector

40. In his second written statement, Mr Alexander addressed Mr Hardy's evidence that the pan connector used at Mrs Robertson's was an Elementi 15021.10 which had Watermark approval meaning it was deemed to comply with the Code. Noting that it was not clear that the Elementi pan connector itself had Watermark approval, Mr Alexander considered Mr Hardy appeared to have used it as an Alternative Solution to meet the requirements of the Code. However, he stated that manufacturer's instructions would need to be followed when installing the connector in order for it to comply with Alternative Solutions requirements. Mr Alexander was of the opinion that that had not occurred in this case because of the failure to fix the pan to the wall and the use of silicone resulting in the toilet leaking.

41. Mr Hardy's evidence was that the Elementi was likely installed into the existing universal pan connector and he understood this to be a compliant installation technique. Mr Alexander stated that this would only be compliant if the Elementi was installed into an existing DN 100mm PVC-U pipe or other material referenced in G13 AS1 Table 1. He noted that lead pipes and pan connectors were not on that list meaning the manner of installation likely used by Mr Hardy was not compliant.

42. Mr Alexander referred to Mr Hardy's evidence that the pan connector was connected using silicone and black PVC tape and that this was an appropriate way to make this connection. Mr Alexander noted that these materials do not comply with Table 1. Mr Alexander also noted that the installation instructions for the Elementi provided that the use of silicone on any part of the installation other than sealing the toilet to the floor or wall may void the product warranty. Mr Alexander was therefore of the opinion that the use of these materials as a means of connection did not comply with the installation instructions meaning the product did not comply with its Watermark approval. Mr Alexander also noted that the use of black PVC tape was inappropriate for such a connection as it could become loose when it came into contact with water.

43. Mr Alexander noted that the Elementi has a threaded rod and base plate that needs to be screwed to the wall to fix it in place but Mr Williams' evidence was that the pan connector he removed was not fixed to the wall. Failing to install the rod and base plate would likely cause the Elementi to tip back at an angle when the pan was pushed back to the wall meaning the rubber would not seal on the inlet at the pan and outlet at the existing universal pan connector. This risked leaks occurring and was contrary to the manufacturer's instructions. Mr Alexander was of the opinion that this manner of installation would not comply with G13 of the Code. It was also his opinion that this was the likely cause of the leak at Mrs Robertson's.

44. Mr Alexander addressed Mr Hardy's evidence that silicone had not been used to install the pan connector and that what could be seen in the photo of the removed connector taken by Mr Williams was lubricant. Mr Alexander stated that in his opinion what could be seen in the photo was silicone as lubricant would have a cakey, dry residue and wouldn't leave a large bead as seen in the photo. In relation to the black tape also seen in the photo, Mr Alexander stated that the issue with the use of black tape on the rubber connector to hold it to the plastic was that if moisture got under the tape it would start to let go.

45. Mr Alexander stated that it was his opinion that the cause of the leak in this case was the lack of the threaded rod attaching the Elementi to the wall. Without the Elementi being fixed to the wall, he considered it was likely it tilted when the toilet was slid back on to it meaning the rubber seals between the toilet and the Elementi and the Elementi and the old universal connector did not seal correctly. When the drain blocked and the toilet pan filled with water, the lack of proper seals meant the toilet pan could not hold the water pressure and the toilet leaked as a consequence.

46. Mr Alexander stated it was possible to install the toilet pan without the threaded rod being in place but it would not be possible to know if it was properly sealed as the usual flush tests would not necessarily reveal that it was not sealed. He stated that it was only when there were higher flow rates through the pan or the drain became blocked and the connector filled with water that it would come out through the leak points.

47. Mr Alexander stated that having more connections in the toilet meant there was more likelihood of leakage especially if those connections are moveable. He said that typically the Elementi would insert deep down into the 100mm pipe below the floor level. By inserting the Elementi into the universal pan connector, a weak point was created and if the Elementi was pushed back it would open up at this point which could release water and foul air from the drain. He said that best practice in cases like Mrs Robertson's would be to install a new pipe outlet and a single pan connector rather than multiple connectors.

48. In cross examination, Ms Eglinton asked Mr Alexander whether he would accept the installation if it was established on the evidence that the threaded rod and base plate had been installed. Mr Alexander responded that as an Alternative Solution it may

well work but the pan had leaked and therefore did not meet the performance criteria of G13 relating to decreasing the likelihood of leakages.

49. Ms Eglinton questioned Mr Alexander about the Watermark number stamped on to the Elementi. He responded that when he had checked it had not had a current certificate which was also required. Mr Alexander agreed that installation of the Elementi in accordance with the manufacturer's instructions meant silicone could only be applied to the outside of the connector. He also stated that he considered the use of the second pan connector as part of the installation was likely not in accordance with the manufacturer's instructions. Mr Alexander accepted that the second universal pan connector was made of plastic but stated that he did not have information about whether it was a kind specified in Table 1 of G13 AS1.

50. Ms Eglinton took Mr Alexander to the photo of the drain in the floor and advised him that Mr Williams had agreed that the photo was not of Mrs Robertson's property. She asked him if that could have an effects on his opinions. He advised that the connections being discussed in this case were from the universal connector up so his opinions would not change as the photo was from below the universal connector. Ms Eglinton then took Mr Alexander to a photo showing the pan connector from the toilet outlet and put it to him that Mr Hardy's evidence was that it showed lubricant, not silicone. Mr Alexander did not agree saying lubricant would have been partially washed away by the normal action of flushing the toilet and the ribbon-like nature of the material visible in the photo looked like silicone that had been applied to the rubber gasket and then had the toilet pan pushed against it. Mr Alexander's view was not changed on learning that the lubricant used was Venoleo which he said was soft and would wash away.

51. Ms Eglinton questioned Mr Alexander about how water could get to the black tape having regard to where Mr Hardy stated it had been installed. Mr Alexander responded that given water was leaking outside the pan, water would have been splashing around inside the cavity of the toilet pan and would have had contact with the black tape.

52. Ms Eglinton asked Mr Alexander if it was possible to install a toilet if the threaded rod and base were not installed. Mr Alexander explained that friction would hold the pan connector upright when inserted into the drain allowing the pan to be pushed back into the connector. However, without the pan connector being fixed, there is a high likelihood that the movement of pushing the pan back on to the connector would move it tilting it up or down. Ms Eglinton asked whether the plumber would feel that and Mr Alexander responded that there was usually a thud or clunk when the connection was made and resistance would be felt. However he said the only way to tell was to flush test the toilet because you could not see behind the pan.

53. In response to questions from the Board, Mr Alexander stated a toilet pan would be slid forward to remove it where there was a threaded rod installed. He said it would be difficult to remove the toilet by lifting it upwards if the rod was installed. He

agreed you would know the threaded rod had been installed when you went to remove the toilet. Mr Alexander consider it was very unlikely a plumber would be able to install the toilet by connecting the pan connector to the toilet and then dropping it on to the universal. He also did not think the movement of water when the toilet was flushed would be enough to move the connector if it wasn't fixed to the wall. Mr Alexander advised that he did not think the use of the existing universal pan connector would allow the newly installed toilet to meet the durability requirement of a minimum of five years for the installation. Mr Alexander agreed that, if the outlet of the Elementi was smaller than the outlet of the toilet as he considered was likely, then there would not be the required seal in that location if there was a blockage in the system.

Summary of evidence – investigator

54. The final witness was the investigator, Wayne Radovich. The Board considered Mr Radovich's evidence contained in a written statement dated 25 June 2024. Mr Radovich also gave evidence at the hearing in person.

55. Mr Radovich stated that he was employed by the Board as an investigator. He described receiving Mrs Robertson's complaint and the process followed in relation to her complaint leading to his appointment as an investigator on 31 May 2023. Mr Radovich described the information he sought during his investigation and the report he prepared about the investigation.

56. Mr Radovich gave evidence about Mr Williams authorisation history, stating that he had been authorised to carry out sanitary plumbing at the time he carried out the work at Mrs Robertson's under a limited certificate trainee authorisation. Mr Radovich stated that Mr Williams did not require direct presence supervision from his supervisor at the time of that work as he was not within the first 12 months of holding a limited certificate authorisation.

Summary of opening submissions for Mr Hardy

57. Ms Eglinton began by describing the facts in the case. Sometime before February 2022, Mrs Robertson had purchased the property. The property was damaged as a result of the Christchurch earthquakes and Mrs Robertson engaged a builder to carry out repairs to the dwelling. The builder, in turn, approached Mr Hardy's company to carry out the plumbing and drainage work.

58. Between March and July 2022, an employee of Mr Hardy's company removed and refitted a toilet at the property under Mr Hardy's supervision and with his assistance. As part of this work, the employee cut-to-size and installed an Elementi 15021.10 pan connector from the toilet pan into an existing universal pan connector. No silicone was applied in this process and no black insulation tape was applied to the outlet of the Elementi. However, a layer of black insulation tape was placed around the exterior of the outlet of the Elementi to support the inlet washer that went on to the toilet pan. WT90 lubricant was then applied to both the inlet and outlet of the pan connector to ensure a snug fit into the inlet washers of the toilet pan and universal

pan connector. The employee also ensured the rod and base plate were in place, as the pan would not sit properly without them, and fixed it to the wall. The employee and then Mr Hardy then carried out the necessary checks to ensure the toilet was correctly installed and there were no leaks.

59. Ms Eglinton submitted that there was no dispute that the work carried out was sanitary plumbing and therefore had to be carried out by an authorised person. It was also not disputed that Mr Hardy and his employee were not authorised at the time the toilet was installed. However, Ms Eglinton submitted that what was in dispute was that the installation of the toilet had been carried out in a negligent or incompetent manner.

60. Ms Eglinton submitted that the toilet pan was not installed using silicone to seal the pan connector and black tape was only applied to the inlet washer that was inserted into the toilet pan. She submitted that this was compliant as it provided strength and ensured the washer stayed in place when the toilet was slid into the outlet. It was appropriate as additional reinforcing on an approved coupling. She submitted that PVC tape in this position provided support for the installation in much the same way as the proprietary retainer does on other types of pan connectors. She also submitted that the tape did not come into contact with water.

61. Ms Eglinton submitted that it was denied by Mr Hardy that silicone was used to insert the new pan connector into the existing universal pan connector. She submitted that new pan connector had its own washer to secure the fit. She also submitted that this was compliant as the new pan connector was installed in a plastic universal connector which is referred to in G13 AS1 Table 1. She submitted that both the new and existing pan connectors were compliant, as was the coupling between the two and that a 100mm PVC pipe between them was not required. Finally, Mr Hardy would confirm that the new pan connector was installed with the threaded rod and base plate fixing it to the wall.

62. Ms Eglinton submitted that as the issues with the installation of the toilet alleged by the investigator did not occur, the sanitary plumbing work carried out did comply with clause G13.3.1 and was therefore not negligent or incompetent. She submitted that the cause of the leak from the toilet was likely due to the drain blocking on a number of occasions putting pressure on the system which blew out the seals between the toilet inlet, the pan connector, and the outlet. In the circumstances, Ms Eglinton submitted that Mr Hardy could not be found guilty of a disciplinary offence under section 89(a)(i) of the Act.

Summary of evidence – Bryce Hardy

63. The first witness was Mr Hardy. The Board considered Mr Hardy's evidence contained in a written statement dated 8 August 2024. Mr Hardy also gave evidence at the hearing in person.

64. Mr Hardy began by stating that he was a registered and licensed certifying plumber and tradesman gasfitter, and held an exemption to carry out drainlaying under

supervision. He stated he was the sole director of his company which provided plumbing, gasfitting, drainlaying, and electrical services. His company employed six people including administrative staff and engaged plumbers, gasfitters, and drainlayers as needed. Mr Hardy confirmed that the employee who carried out work at Mrs Robertson's was an employee of his company.

65. Mr Hardy described his background and experience in the trades which began with work experience while he was still at school and including time spent working overseas. He described returning to New Zealand and starting his company in 2015.

66. He stated that around November 2021, Mrs Robertson's builder approached him to carry out plumbing and drainage work at her property. He understood from the builder that the property had been significantly damaged in the 2011 earthquakes and the then owners of the property had sold it to Mrs Robertson 'as is where is'. He stated he understood it was Mrs Robertson's intention to repair the dwelling on the property and subdivide the section and build a new dwelling on the back of the property.

67. Mr Hardy stated that he had attended a site meeting in February 2021 with the builder, Mrs Robertson, and an electrician to discuss the repair work that needed to be carried out. It was agreed that the repairs to the 1890s cottage would be carried out first, followed by repairs to the drainage system to the cottage. New drainage to the new dwelling would be installed once the necessary plans for that dwelling had been finalised. After the meeting, the builder undertook a CCTV inspection of the drains which revealed that the earthenware drains were cracked, misaligned, and full of tree roots. Mr Hardy stated that he and the builder strongly recommended that the drains were replaced but Mrs Robertson did not want this work undertaken until the drainage for the new dwelling was installed as it would be more cost effective to do both at the same time.

68. Mr Hardy stated that he agreed that his company would carry out the plumbing work on the dwelling which involved removing all the plumbing, fixtures, and fittings from the kitchen, laundry, bathroom, and separate toilet to allow the builder to carry out repairs before replacing the fixtures and fittings. From 3 to 8 March 2022, Mr Hardy stated he and his employee capped off and removed the fixtures and fittings from the kitchen, laundry, and bathroom but left the toilet as it was being used as the site toilet. Between 25 March and 21 July 2022, they returned to the site a number of times to install new pipes and reinstall new and existing fixtures and fittings in the kitchen, laundry, and bathroom.

69. Mr Hardy stated that most of the work was completed with his employee's assistance. Mr Hardy stated he did not charge for his own time as he understood from the builder that Mrs Roberton was "on a shoestring budget and needed help". He stated that his employee did not carry out work unsupervised as he was only in the first year of his apprenticeship.

70. Around 26 May 2022, Mr Hardy stated he and his employee removed the old, existing toilet and replaced it with a secondhand toilet supplied by Mrs Robertson.

They also installed a new sink in the toilet room. Mr Hardy assisted with moving the old toilet out of the room and installing the new one, but his employee completed the rest of the work. Mr Hardy tested the toilet after his employee had carried out his own tests.

71. Mr Hardy stated that as the toilet was secondhand, it did not come with a pan connector and they needed to work out which type of pan connector would be the best fit. He stated that they likely installed the new pan connector into the existing universal pan connector though he could not recall specifically and that this was a compliant installation technique.

72. Mr Hardy stated that he had identified the pan connector as the Elementi 15021.10. He stated that this model of pan connector comes with a plastic inlet and outlet washer but does not have a proprietary washer seal. It does have the Watermark approval. He stated that to size this connector, both of the washers have to be removed and the connector was cut to size. His employee would then have put the inlet washer back on under his instruction and placed a layer of black insultation tape around the inlet washer. He stated this was done as standard good installation practice to provide strength and help ensure it stayed in place when the toilet was slid into the inlet. The tape went around the outside of the washer and was not in place of the washer. He stated they would also do this if they were installing a connector with a rubber sealant ring and he had been taught to do this when he was doing his training.

73. Mr Hardy stated that his employee would then have applied lubricant to the inlet washer to ensure a good seal. Under his instruction, he would also have added lubricant to the outlet of the pan connector before sliding the toilet into place over the existing universal pan connector. He stated he did not recall if the washer on this end was reinstalled as they would have considered the universal connector seal to be acceptable and had sized the Elementi diameter accordingly.

74. Mr Hardy stated that when they installed the toilet, the flooring had not been laid and on 20 June 2022 they removed and reinstalled the toilet in the same way to allow vinyl to be installed. This was the last work they completed on the toilet and he stated that it was in good working order. He stated they did not install the metal drain clearing rod which could be seen in photos of the toilet.

75. Mr Hardy stated that they were required to clear blockages of the toilet on two occasions while they were working on site by plunging the sewer pipe to clear it of toilet paper. He stated he was not surprised the toilet later leaked, particularly if it had had regular blockages between June and November.

76. Mr Hardy stated that he had some concerns about the repairs carried out by the remedial plumber. He also was concerned that the work had been carried out by an apprentice on his own. He stated that is why he had told Mrs Robertson he was not prepared to reimburse her for the remediation costs.

77. With regard to his employee working without an authorisation and his licence being lapsed at the time, Mr Hardy stated that his company renewed all its employees

licences each year and he described the process followed to do this. He stated the process is usually managed by the company's accounts manager and in 2022 there was a new person in that role. He stated the company was also struggling at that time with invoices not being paid on time as were many people following the pandemic lockdowns. Finally, he stated that he had thought his employee's training organisation was responsible for obtaining his authorisation as that had been his experience with his previous apprentices through Masterlink. He stated he had sorted out the necessary licence and authorisation as soon as possible after becoming aware they had lapsed.

78. In response to questions from Ms Eglinton, Mr Hardy advised that the threaded rod and base plate had been installed at Mrs Robertson's and it wouldn't have been possible to install the toilet if it hadn't been. He said the toilet would have leaked on the first flush if that had been the case. Mr Hardy accepted that it was not ideal to install a pan connector into another pan connector but there had been no other option in this case as the drain was 100 year old lead pipe. He did not accept that connecting the Elementi to the existing universal pan connector was an additional join as the existing connector was the top of the pipe. In terms of the approach taken by the Mr Williams to remediating the toilet, Mr Hardy said they thought it was better to wait until Mrs Roberston was ready to install the new drains for the additional dwelling and not spend considerable time trying to work with the existing lead drain pipe.

79. In response to questions from Ms Mok, Mr Hardy agreed that the threaded rod and base plated needed to be installed for the Elementi to be compliant and that the manufacturer's instructions also required the installation of the rod. Referring to Mr Hardy's description of what his employee would have done when installing the toilet, Ms Mok put it to him that he had not been present when at least some of the work was carried and had not witnessed what they had done. Mr Hardy did not agree. She then put it to him that he may not recall every step of the installation. Mr Hardy acknowledged that the job was quite generic and some time ago but said he remembered it fairly well. He also stated that his technique was quite similar across different toilet installations.

80. Ms Mok put it to Mr Hardy that despite agreeing that the threaded rod and base plate was quite a fundamental step in installing the toilet and going into some detail in his statement about how the toilet had been installed, he never mentioned instructing this employee to install the rod on the Elementi. Mr Hardy accepted that he had not mentioned this step and it probably was important to have detailed it. Mr Hardy denied that he was only saying the rod had been installed now to refute the allegation that it had not been installed. Accepting that Mr Williams had said in both of his statements that there was no threaded rod and base plate installed, Mr Hardy accepted that he had no reason to think Mr Williams was lying.

81. Ms Mok referred to Mr Alexander's evidence that the drain was not the cause of the problem with the toilet in this case as, even if the toilet filled to the top of the bowl, the seals should not have leaked. She put it to him that given there had been a leak in this case, it suggested the seals were not sufficient. Mr Hardy responded that

there had been no issue with the toilet for six months while being used as the site toilet until the drain properly collapsed. Mr Hardy did not agree that the drain was not the issue in this case.

82. In relation to supervision, Mr Hardy accepted that he was responsible for ensuring the work carried out by the employee under his supervision was compliant and up to Code. He also accepted he had an obligation to ensure the work was done competently.

83. Referring to the photo of the pan connector removed by Mr Williams, Mr Hardy agreed that the material in the photo did appear to be silicone but could offer no explanation for how it got there. He also could not explain the black PVC tape on the pan connector visible in the photo and agreed that it would be a disaster if it had been used to connect the toilet as the connection would leak as soon as water came into contact with the tape.

84. Mr Hardy was asked by the Board whether he had any concerns about re-using the existing universal pan connector and he said they had been happy with that join. When asked if he had any concerns about the elasticity of such an old connector given the durability requirements for the work, Mr Hardy responded that ideally he would have run all new pipes but cost was an issue in this case. He said that ultimately it would have been a lot of work to deal with the lead drain and he was happy enough with the condition of the existing universal connector. Mr Hardy stated he was aware of the pressure requirements a pan connector had to meet and would not expect a pan filled to the rim to leak. He repeated that he considered it was the drains blocking that cause the leak in this case.

Summary of evidence – Allan Day

85. Mr Hardy's second witness was Mr Day. The Board considered Mr Day's evidence contained in a written statement dated 9 August 2024. Mr Day also gave evidence at the hearing in person.

86. Mr Day stated that he was a plumber and drainlayer who began his apprenticeship at the age of 15. He was currently 74 years old and retired, but had worked in the industry for over 40 years as both an employee and an employer. Mr Day stated he had stayed involved in the industry in an advisory capacity, including to Mr Hardy previously.

87. Mr Day stated that he had viewed a diagram of the Elementi and it did not have a plastic retaining ring for the rubber seal. He stated that not all pan connectors require a plastic ring to fit over the seal. He stated that providing a product was approved for use in the market and the manufacturer's instructions were followed when it was installed, it was his opinion that a pan connector such as the Elementi would be appropriate to fit to a secondhand toilet provided it fitted the corresponding fittings. He stated that the process followed by Mr Hardy to install the Elementi appeared to comply with the manufacturer's instructions and the addition of tape to seal it was appropriate as additional reinforcing on an approved coupling.

88. Referring to the use of two pan connectors and whether this could lead to leaks, Mr Day stated it was acceptable to mate two approved connectors providing the outlet of the second connector is 100mm in diameter and forms a seal with the internal seal of the existing universal pan connector. Mr Day stated that the universal pan connector had its own black rubber seal inside its housing which was compatible with the 100mm diameter outlet of the Elementi when the supplied fluted outlet seal was removed.

89. In relation to the leak from the toilet, Mr Day stated that he understood that the drains at the property were in a very poor stated and were frequently blocking while work was being carried out and possibly afterwards. He stated that blockages of this nature would take their toll on any installation especially if it was plunged regularly through the pan. Mr Day stated that seals commonly weep when a toilet is plunged and an unqualified person may make contact with the pan and damage it when plunging it increasing the likelihood of it leaking. Unqualified people may also use the wrong tool and Mr Day referred to the metal drain clearing implement which could be seen in one of the photos of the toilet at Mrs Robertson's. Mr Day stated that Mr Hardy had confirmed that his company did not install this and it was possible another person using this implement may have damaged the installation.

90. Mr Day stated he understood Mr Hardy pointed out the state of the drains to the homeowner and recommended they were replaced but this did not occur. He stated that in his opinion, a compliant installation of this toilet on to the existing drainage system was very likely to leak at some point.

91. In response to questions from Ms Eglinton, Mr Day said he thought the threaded rod had to have been installed on the Elementi. He didn't see how the toilet could have been installed without it because the faces of the toilet and connector had to be parallel when the pan was pushed on to the connector. If they weren't, the connector would tilt. He considered you would know straight away that this had happened because the toilet would leak when it was flushed. Mr Day also thought it was relevant that the toilet had been installed and removed and installed again and had not leaked when this was done and he did not think Mr Hardy could have done this if the rod wasn't in place. Mr Day did not think it would have been possible to install a toilet without the rod.

92. Mr Day did not agree with Mr Alexander's evidence that installing the Elementi connector into the existing universal pan connector introduced an additional connection. Mr Day said that the universal pan connector was already sealed into the pipe underfloor and was not a problem. This meant there were only two connections made between the toilet and the Elementi and the Elementi and the old universal connector.

93. In response to questions from Ms Mok, Mr Day agreed that the threaded rod was needed for the installation of the toilet to comply with the manufacturer's instructions. However, he did not think it would be possible to install the toilet if the rod wasn't in place as there would be nothing to push the toilet into.

94. Mr Day accepted that the metal clearing rod was purchased after the toilet installed by Mr Hardy had leaked and been remediated and therefore could not have contributed to the leak.

95. Mr Day agreed that a toilet should be installed in a compliant manner and not leak regardless of the state of the drains. When asked whether Mr Hardy should have installed the toilet given the state of the drains, Mr Day said he understood it was an interim measure until the owner had the drains replaced. When asked whether this was appropriate given Mr Hardy did not know when that might happen, Mr Day said the toilet had been used as site toilet satisfactorily for some months before Mrs Robertson moved into the property. He also said that when a practitioner is asked to install a toilet even if they know it is likely to leak at some point, that is what they do.

96. With regard to the silicone, Mr Day said that the Elementi had rubber seals and sealed itself. He said it could be installed without silicone but it was not detrimental if silicone was added. He did not see how using silicone would void the warranty for the product. Mr Day also considered that there was no issue with installing the Elementi into the existing universal pan connector. When questioned about whether this would meet durability requirements, Mr Day said it would depend on the condition of the old pan connector and that was something the practitioner onsite would assess when carrying out the work.

97. The Board questioned Mr Day about whether he would advise the re-use of a 30+ year old pan connector where the rubber may have become stretched over time behind a heavy toilet. Mr Day accepted this was a valid point but said that in these circumstances he understood money was an issue and it would depend on the condition of the old connector. Mr Day did not think the toilet pan with the Elementi connector already connected had been dropped on to the existing universal connector. He did not think it was possible to install the toilet this way given the weight of the pan, the diameters of the connectors and the inability to see because of the pan skirt.

Summary of closing submissions for investigator

98. In her closing submissions, Ms Mok submitted that the question for the Board to determine was whether sanitary plumbing had been carried out in a negligent or incompetent manner at Mrs Robertson's because the Elementi had been sealed using silicone and black PVC tape, had been installed in an existing pan connector using silicone, and had not been fixed to the wall using the required threaded rod and base. She submitted that any or all of these issues caused the toilet to leak meaning that it did not comply with the requirements of the Code.

99. Ms Mok submitted that the investigator primarily relied on the evidence of the remedial plumber, Mr Williams and the technical evidence of Mr Alexander. Mr Williams evidence was that he had attended the property and found a number of issues with the toilet. Ms Mok submitted that Mr Williams had identified in his first statement that the pan connector had not been fixed to the wall and while he had not recorded that in his job callout notes, he had been a credible witness and there

had been no reason for him to make this up. She submitted that the Board could therefore rely on his evidence in this respect.

100. Ms Mok submitted that, by contrast, Mr Hardy's evidence about the installation of the toilet did not sound like the evidence of someone who had seen the work carried out. Rather, his evidence appeared to be about good installation technique and the steps his employee would have taken which was not the same as him saying he had witnessed his employee doing these things. Ms Mok submitted that as a first year apprentice who requires direct presence supervision, it should be expected that Mr Hardy would have been present while his employee carried out all the steps of the installation.

101. Ms Mok submitted that all of the witnesses giving evidence had accepted that it was possible to have installed the toilet without the rod and base plate, albeit that it would not have been easy to do. She submitted that the manner of the leakage described by Mrs Robertson and commented on by Mr Alexander was consistent with the situation described by Mr Alexander where the pan connector has tilted back because of the lack of rod and that this has been exacerbated by blockages in the drain.

102. In terms of any submission for Mr Hardy that the existing state of the drains was relevant to whether or not the toilet installation was defective, Ms Mok submitted that this was not relevant. She submitted that the drainage system was separate from the sanitary plumbing work carried out and while the drains may have brought the problem with the toilet to a head, as Mr Alexander had said, they were not the cause of it. The cause was the manner in which the toilet had been installed. Similarly, the metal clearing rod was also immaterial as it had been purchased and used well after the leak had occurred.

103. With regard to whether the Elementi had been sealed using silicone and PVC tape, Ms Mok submitted that Mr Williams evidence, including his contemporaneous job notes, was that was the case. This was supported by Mr Alexander's evidence that the photo of the removed outlet washer showed silicone and not lubricant as submitted by Mr Hardy. Ms Mok submitted that there was no evidence to suggest that the photo was not of the outlet washer removed by Mr Williams and taken at the time it was removed.

104. With regard to the issue of the insertion of the Elementi into the existing universal pan connector, Ms Mok submitted that the evidence differed as to whether or not this was compliant. However, she submitted that the investigator's position was that it was an unsatisfactory method for this installation given the drainage issues. Ms Mok submitted that the use of the existing connector also raised usability and durability issues given the age of the connector.

105. In closing, Ms Mok submitted that the issues with the toilet leaking did not come out of nowhere and the investigator's position was that they came from defects with the installation of the toilet. Ms Mok referred to Mr Alexander's evidence that even if the toilet bowl had been filled to the rim, the seals should have held and the fact that

they did not was due to one of the defects alleged in the charge arising from the manner in which the toilet had been installed.

Summary of closing submissions for Mr Hardy

106. Ms Eglinton submitted that in relation to the manner in which the Elementi had been sealed, Mr Hardy's evidence was that his employee had used lubricant for this and not silicone. Mr Hardy had also explained where he had used black PVC tape on the Elementi and that it had been for additional strength similar to a proprietary plastic covering. She submitted that the evidence did not show that the PVC tape had been used to seal the pan connector and the use of silicone for this purpose was also denied.

107. Ms Eglinton submitted that the use of the existing universal pan connector for the Elementi to be installed into was compliant. In terms of durability, Ms Eglinton submitted that it was Mr Hardy's evidence that the condition of the existing pan connector had been assessed before the decision was made to connect to it. This addressed any issues of durability and was acceptable in the situation. Ms Eglinton submitted that there was a commercial reality in the situation as the customer was doing work in stages and the drains were going to be replaced at which time the old universal pan connector could be removed. In the meantime, if Mr Hardy considered it was appropriate to use the old connector given he had checked it before using it.

108. With regard to the threaded rod and base plate, Ms Eglinton accepted that there had been evidence that the toilet could have been dropped in rather than slid on, but she submitted that that was not the evidence of how the toilet had been installed. She submitted that it was therefore more likely than not that the toilet had been installed using the base plate and rod. In terms of Mr Williams evidence, she submitted that his statement that the pan had not been connected to the wall had been made two years after he carried out the remedial work. Given how important the rod and base plate had been to the installation of the toilet, Ms Eglinton submitted that it was difficult to understand how Mr Williams could have failed to record such a thing on his job notes for the work at the time.

109. Finally, in terms of whether the drains played a role in the toilet leaking in this case, Ms Eglinton submitted that the evidence from Mr Hardy had been that water places a lot of pressure on seals and it is possible that even good seals could fail if there was a lot more pressure on them. She submitted that the drains therefore had had an effect in this case.

Consideration of liability

110. The Board began by considering charge two and whether Mr Hardy was guilty of employing, directing, or permitting an unauthorised person to carry out sanitary plumbing work. The Board accepted Mr Hardy's guilty plea to this charge and determined that charge two had been made out.

111. Turning to charge one, the Board began by considering particular one and whether the Elementi had been sealed using silicone and black PVC tape. Mr Williams

evidence was that the Elementi had been taped on to the pan outlet using black tape and this was supported by the photo of the removed connector provided by Mrs Robertson with her complaint. Mr Hardy's evidence was that his employee had used lubricant to ensure a good fit between the connector and the pan and black tape had been used around the inlet washer on the Elementi to hold it in place and provide additional strength.

112. Having considered the evidence in relation to this particular, the Board determined that while black PVC tape had clearly been used on the Elementi, the Board could not be satisfied to the required standard that the tape had been used to seal the connection. This particular was therefore not made out.

113. Turning to the second particular, the Board considered whether the Elementi had been installed into the existing pan connector using silicone. There was no contest that the Elementi had been installed into the existing Caroma universal pan connector. Mr Alexander's evidence was that this did not meet the requirements for an Alternative Solution and was therefore non-compliant. Mr Hardy and Mr Day's evidence was that this was an acceptable and compliant manner of installation given the work that would have been involved in altering the lead drain otherwise. It was also Mr Hardy's evidence that he had checked the condition of the existing universal connector and was satisfied that it was appropriate to connect the Elementi into.

114. Given the age of the existing universal pan connector, the Board considered that it was unavoidable that the rubber on it would have degraded over time potentially reducing its functionality and durability. This was reflected in the photos of the old pan connector which showed it was aged and appeared to be in poor condition. The Board considered that replacing it was something which could have been undertaken relatively easily by Mr Hardy and without the need to alter the existing lead drain. In the circumstances, the Board considered that the use of the old existing multi fit connector was negligent or incompetent in the circumstances.

115. In relation to whether the threaded rod and base plate had been installed on the Elementi, Mr Williams evidence was that it had not been fixed to the wall though he had not recorded this in his job notes written at the time. Mr Hardy's evidence was that the rod would have been installed because it would not have been possible to install the pan otherwise. While both Mr Alexander and Mr Day had given evidence about whether or not a toilet could be installed without the threaded rod in place, ultimately the Board concluded there was insufficient evidence to establish whether or not this had happened in this case. The Board therefore determined that this particular had not been made out.

116. Being satisfied that the use of the existing universal pan connector to connect the Elementi had been negligent or incompetent, the Board then considered whether this defect caused the toilet to leak contrary to the requirements of G13 of the Code. There was no dispute that the toilet leaked and Mrs Robertson's evidence was that this occurred when the toilet was flushed which caused the toilet bowl to fill up with water. The Board considered that pressure from the increased water load within the toilet likely caused a leak from the connection between the Elementi and the

universal pan connector given the age and state of the rubber on that connector. The Board therefore found this particular made out.

Board decision on liability

117. The Board found Mr Hardy:

    a. guilty of carrying out sanitary plumbing in a negligent or incompetent manner for installing the new pan connector into the existing pan connector which caused the toilet to leak and was contrary to clause G13.3.31 of the Code (charge one)

    b. guilty of employing, directing, or permitting an unauthorised person to carry out sanitary plumbing work (charge two).

Summary of submissions for investigator on penalty

118. Ms Mok submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and 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 that the principles and purposes of the disciplinary proceeding were met.

119. Ms Mok submitted that Mr Hardy's offending was moderately serious. While the defect with the work was limited to the toilet, she submitted that it did create a high risk of harm to the occupants as foul water was being released into the home which could have caused sickness if not remediated.

120. Ms Mok submitted that the work had also been carried out by an unauthorised person under Mr Hardy's control and direction. She submitted that this raised a potential issue with Mr Hardy's licensing and supervision processes as his evidence indicated the failure to renew licences was business wide. He accepted that his company took responsibility for renewing its employees' licences each year and his evidence was that in 2022 the company was struggling financially due to the effects of the pandemic and non-payment from others owing the company money. She submitted that this raised the possibility that the failure to renew licences may have been somewhat intentional and showed a failure on Mr Hardy's part to understand the importance of ensuring his employees were appropriately authorised before directing them to undertake sanitary plumbing work.

121. With regard to the employee who worked on the toilet at Mrs Robertson's, Ms Mok submitted that he had never held any kind of authorisation permitting him to do such work. Mr Hardy had incorrectly assumed the training institute would be responsible for obtaining an authorisation for him but took no steps to confirm this. She submitted that he ought to have taken greater care as the director of the company to

ensure that only authorised people carried out sanitary plumbing work at his direction.

122. Ms Mok submitted that a fine with a starting point in the vicinity of $3,500 to $4,000 and further training around supervision was the appropriate penalty in this case recognising that two of the three particulars of the negligent or incompetent sanitary plumbing charge had not been proved. In support of her submission, she referred the Board to the cases of *Tiernan v Bowie,* 2021/13, *Costelloe v Harmse*, 2018/4, and *Radovich v Ellery*, 2022/12. In *Bowie*, Mr Bowie pleaded guilty to employing, directing, or permitting an unauthorised person to carry out drainlaying and causing drainlaying to be carried out in a negligent or incompetent manner in relation to the replacement of residential stormwater drains. The Board considered Mr Bowie's conduct was moderately serious and adopted a starting point for the fine in the case of $3,000. Ms Mok submitted that Mr Hardy's conduct was similar to that in *Bowie* though the defect with the work in the present case was more serious as it gave rise to a risk of harm.

123. In *Harmse*, Mr Harmse pleaded guilty to employing, directing, or permitting an unauthorised person to do sanitary plumbing and causing sanitary plumbing to be carried out contrary to an enactment. The Board considered that the non-compliant work was not serious but Mr Harmse's failure to check the licensing status of the person he sub-contracted to do the work was concerning. Mr Harmse was fined $3,350. Ms Mok submitted that Mr Hardy's case was more serious as the work had been carried out by an employee who had never been authorised.

124. Finally, in *Ellery*, Mr Ellery pleaded guilty to employing, directing, or permitting an unauthorised person to do drainlaying work and carrying out negligent or incompetent drainlaying work in relation to the installation of a residential effluent drainage system. There were extensive defects with the work and the Board considered the offending was moderately serious. The starting point for this fine was $5,000. Ms Mok submitted that the defect with the work in Mr Hardy's case was less serious, but submitted that both cases resulted in foul water being released which created a risk of harm.

125. Ms Mok submitted that the investigator was not aware of any aggravating factors in the case personal to Mr Hardy. She also accepted that he had no previous disciplinary offending and had pleaded guilty to one charge which had narrowed the issues the Board was required to determine in the hearing.

126. Finally, Ms Mok submitted that the Board could require Mr Hardy 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 the costs, but it was ultimately for the Board to determine in its discretion. She submitted that Mr Hardy had accepted one of the charges against him and that while the investigator had not been successful on two particulars on the other charge

against him, both charges had ultimately been proved. Ms Mok submitted that a modest discount from the starting point may be appropriate in the circumstances.

Summary of submissions for investigator on penalty

127. Referring to the Board's findings on liability, Ms Eglinton submitted that it had been appropriate for Mr Hardy to defend charge one, particularly given the late addition of the particular relating to the threaded rod and base plate, which had not been proved. She submitted that Mr Hardy should not be penalised for having defended this and the other particular which was not proved as well as the one which had been proved because he genuinely considered connecting into an existing pan connector was a compliant procedure.

128. Ms Eglinton submitted that Mr Hardy had pleaded guilty to charge two and accepted that he and his employee had been unlicensed from 1 April 2022 until 30 June 2022 and another employee had not held the necessary authorisation for the same period. Ms Eglinton submitted that Mr Hardy had explained the lapse in licences as being the result of a new administrative staff member who had not been aware that the licences needed to be renewed and significant financial pressure following the pandemic lockdowns. She submitted that this had taken a significant toll on Mr Hardy as a business owner and should be taken into account as a mitigating factor rather than an aggravating one as submitted by the investigator.

129. With regard to the investigator's submission that the lapse in licences was a wider concern, Ms Eglinton submitted that there was no evidence before the Board of other practitioners employed by Mr Hardy's company carrying out work that required them to be licensed. She submitted that this was therefore not a factor the Board could take into account when considering penalty. She submitted that the short lapse in Mr Hardy and his employee's licences had been unintentional and was not a serious breach. She also submitted that the failure to obtain an authorisation for his apprentice employee was also understandable given his long-term experience with Masterlink which had obtained the necessary authorisations for his previous apprentices. Mr Hardy's failure to obtain the authorisation had been an oversight and he had remedied it as soon as he was made aware of it.

130. Ms Eglinton submitted that the legal principles that applied to imposing disciplinary penalties were well known and not in dispute. She referred the Board to a number of comparable cases including *Radovich v Dare*, 2022/19, *Pidgeon v D McDonald*, 2022/20, *Thomas v Riddiford*, 2022/5, and *Thomas v Christeson*, 2021/18. Mr Dare pleaded guilty to a representative charge of employing, directing, or permitting an unauthorised person to carry out sanitary plumbing in relation to employing multiple unauthorised people to carry out multiple trades at multiple sites over an extended period of time. The Board considered Mr Dare's offending was at the higher end of moderate and adopted a starting point fine of $4,000. Mr McDonald pleaded guilty to employing, directing or permitting an unauthorised person to carry out sanitary

plumbing when he relied on an employee who told him his Irish apprenticeship was equivalent to being a registered plumber in New Zealand. The starting point for the fine in that case was $3,000 as the Board considered the offending was at the low end of moderate. Mr Riddiford pleaded guilty to unauthorised work and was found guilty of negligent or incompetent sanitary plumbing. The Board considered the offending was low in terms of seriousness and adopted a starting point for the fine of $2,000. Finally, Mr Christeson was found guilty of negligent or incompetent sanitary plumbing which the Board considered was moderately serious. The starting point for the fine was $4,500.

131. Ms Eglinton submitted that while the work carried out by Mr Hardy could be considered more serious than that in *Riddiford*, it was similar to *D McDonald* and less serious than *Christeson*. *Dare* was more serious as it involved multiple unauthorised employees, multiple trades, multiple sites, and occurred over an extended time period. She submitted that Mr Hardy's offending should be seen as low in terms of both charges and a starting point for the fine of $2,000 was appropriate. Ms Eglinton submitted that there was no evidence of the need for Mr Hardy to undertake additional training on supervision as he was supervising the employee concerned.

132. Ms Eglinton acknowledged that the general starting point for an order of costs was 50% of the costs. However, she submitted that a significant reduction should be given in this case as only one of the three particulars of charge one had been proved and he had pleaded guilty to charge two. She submitted that Mr Hardy had incurred significant costs in relation to this matter including in relation to charges against a second employee which were discontinued. She submitted that charge one had also been clearly and reasonably defendable and it would be unfair and inappropriate to make Mr Hardy responsible for half the costs of the investigation and prosecution in the circumstances. She submitted that the costs should therefore be discounted by at least two thirds, if not more.

Consideration of penalty

133. 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 the practitioner by holding them to account for their offending, assist with their rehabilitation, and deter them and other practitioners from disciplinary offending.

134. Having considered the submissions and the facts of the case, the Board determined that Mr Hardy's offending was moderately serious. Connecting one pan connector directly to another was not good trade practice, particularly when the second pan connector was known to be old and therefore likely to be poorer condition. The Board expressed some sympathy for Mr Hardy and the circumstances of this offence recognising that practitioners are often placed in situations where they must do the

best they can within the constraints of the job. However, Mr Hardy's actions had resulted in the toilet leaking likely because of the drain blocking which was a risk Mr Hardy was aware of when he carried out the work. Mr Hardy had also failed to ensure his employee was appropriately authorised before carrying out restricted sanitary plumbing work/ While the Board accept that this was unintentional and understandable given his previous experiences with apprentices managed by Masterlink, Mr Hardy accepted he should have taken steps to check.

135. The Board accepted there were no aggravating factors personal to Mr Hardy and that his cooperation, acceptance of charge two, and lack of previous disciplinary history were mitigating factors in his favour.

136. The Board considered that a fine was an appropriate penalty and determined that the starting point should be $3,500 given the moderately serious nature of the offending. Recognising the mitigating factors, the Board reduced the fine to $2,800.

Costs

137. 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 this matter amounting to $46,552.39.

138. The Board's approach to ordering costs under section 107 of the Act recognises that the complaints, investigations, and disciplinary process is fully funded through a disciplinary levy which must be paid by every practitioner each year when they renew their licences. While every effort is made to keep this levy reasonable, investigating complaints, conducting prosecutions, and holding hearings are costly processes and any costs from these activities which are not recovered directly from practitioners found guilty of disciplinary offences must be borne by every other practitioner.

139. The Board accepted that Mr Hardy had pleaded guilty to charge two, which had saved the cost of a defended hearing on this charge and had successfully defended two of the three particulars of charge one. In the circumstances, the Board ordered that Mr Hardy pay $18,600 which was 40% of the total costs.

Publication

140. In accordance with the requirements of the Act, the Board ordered that details of that action taken against Mr Hardy should be recorded on the register of plumbers, gasfitters, and drainlayers in the usual way. Any other publication of the Board's orders should be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

141. Being satisfied that Mr Hardy was guilty of disciplinary offences under sections 89(a)(i) and 89(g) of the Act, the Board made the following orders:

    i. Pursuant to section 106(1)(f) of the Act, Mr Hardy pay a fine of $2,800.

    ii. Pursuant to section 107 of the Act, Mr Hardy pay $18,600 towards the costs of the investigation, prosecution, and hearing.

142. In accordance with section 74(1)(c)(viii) of the Act, the Registrar must publish the details of the action taken against Mr Hardy on the register of plumbers, gasfitters, and drainlayers.

Appeal

143. If Mr Hardy 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 10 February 2025

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board