Plumbers, Gasfitters and Drainlayers Board

CANNELL v GWYNNE

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/10)

Summary

Nicholas Gwynne, Certifying Plumber, Certifying Gasfitter, was found guilty of charges of negligent or incompetent gasfitting and carrying out gasfitting in a manner contrary to an enactment. The charges related to the installation of a gas heater at a property in Tokoroa in October 2020.

The Board considered that Mr Gwynne's conduct was moderately serious. While understanding of his intentions, the Board found that Mr Gwynne had connected an incomplete gas installation to the gas supply. He had intended to go back the following day to complete the installation but had not been able to and the incomplete installation remained connected to the supply and operational for a number of months before being completed. Mr Gwynne had also failed to issue a gas safety certificate for the installation, an obligation which had arisen when he connected the heater to the gas supply.

Mr Gwynne was fined $4,000 and ordered to pay $11,000 towards costs.

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

BETWEEN **MELISSA CANNELL**

Investigator

AND **NICHOLAS ROBERT GWYNNE**
Certifying Plumber, Certifying Gasfitter, of Putāruru

Registered Person

DECISION OF THE BOARD ON PENALTY
13 June 2024

Hearing:	Held on 17 April 2024
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Beth Healy, Ming-chun Wu, Sue Simons
Counsel:	Elena Mok for the investigator Mr Gwynne was self-represented
Legal advisor:	Richard May

Disciplinary hearing

1. On 30 November 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing via audio visual link to consider a complaint by Walter Craven against Nicholas Robert Gwynne, Certifying Plumber, Certifying Gasfitter.

2. In a decision issued on 18 February 2024, the Board found Mr Gwynne guilty of carrying out gasfitting in a negligent or incompetent manner and carrying out gasfitting in a manner contrary to an enactment for failing to issue a gas safety certificate for the work.

3. On 17 April 2024, the Board held a penalty hearing on the papers to determine what penalty, if any, to impose on Mr Gwynne.

Summary of investigator's penalty submissions

4. 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.

5. Ms Mok submitted that Mr Gwynne's offending was moderately serious. The failure to install securing brackets on the gas heater risk creating further issues with the installation over time. Mr Gwynne had connected the heater to the gas supply and had then left it in an incomplete state, although Ms Mok accepted that he had tried to return to the property to install the brackets. Mr Gwynne has also failed to issue a gas safety certificate for the installation or lodge the details on the WorkSafe Electricity and Gas High-Risk Database (**Database**).

6. Ms Mok submitted that a fine in the vicinity of $3,500 to $4,000 was the appropriate penalty in the case. She also submitted that since this was Mr Gwynne's second disciplinary finding in a short space of time, the Board could consider ordering Mr Gwynne to undertake further training in gasfitting.

7. Ms Mok referred the Board to its previous decisions in *Pidgeon v Lye*, (2023/6) and *Broughton v Hansen* (2019/8). In *Lye*, Mr Lye pleaded guilty to negligent or incompetent gasfitting and failing to lodge details of the installation on the Database in relation to gasfitting carried out by his supervisee. There were various defects with the work, though they did not pose an immediate safety risk. The Board adopted a starting point for the fine of $4,000 in the case. In *Hansen*, Mr Hansen was found guilty of negligent or incompetent gasfitting and issuing a false or misleading gas certificate for gasfitting carried out by his supervisee. In that case a gas fireplace had

not been seismically restrained resulting in the gas pipe kinking over time risking a gas leak. The Board adopted a starting point for the fine in that case of $3,000.

8. Ms Mok submitted that Mr Gwynne's case was slightly more serious than either the *Lye* or *Hansen* cases because he had carried out the work himself. He had also knowingly left the installation in an incomplete state. In relation to the defect with the work, unlike in *Lye*, there was only a single defect, but Mr Gwynne had connected the heater to the gas supply knowing it was incomplete and ultimately left it in that state. He had also failed to understand his obligations as a certifier because he failed to issue the gas certificate or lodge details of the installation on the Database after connecting it to the gas supply.

9. Ms Mok submitted that Mr Gwynne has recent, relevant disciplinary history. In 2023 he had pleaded guilty to negligent or incompetent gasfitting in relation to the installation of an energy saver heater in a residential property in mid-2020. The installation had been unsafe and the Board had assessed Mr Gwynne's conduct as highly serious in that case. He had been fined $4,500, reduced from a starting point of $6,000. Ms Mok submitted that a second unsafe gas installation in a relatively short period indicated issues with Mr Gwynne's gasfitting practices and a risk his conduct could be repeated. She submitted that a training order was necessary to reduce that risk and protect the public. She submitted that the Board may also wish to consider increasing his fine in this case.

10. Ms Mok submitted that the investigator was not aware of any personal mitigating factors relating to Mr Gwynne.

11. Finally, Ms Mok submitted that the Board could require Mr Gwynne 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. Ms Mok submitted that Mr Gwynne had been found guilty of two of the charges following a defended hearing so was not entitled to any reduction in the costs for pleading guilty in the case. However, she acknowledged that Mr Gwynne had been found not guilty of one charge and that one of the particulars of the charge, one alleging a more serious defect with the work, had also not been made out.

Summary of Mr Gwynne's penalty submissions

12. In response to the investigator's submissions on penalty, Mr Gwynne submitted that his financial circumstances were extremely strained and he provided details of his bank balances to support his submission. He submitted that he was a solo parent and had recently gained sole custody of his child which had involved in him a lot of expense. He submitted that he therefore had no ability to pay a fine. Mr Gwynne submitted that he was working the hours he could to get himself and his child back on track.

13. Mr Gwynne submitted that he was a good gasfitter and he had connected the heater to the gas supply because he felt sorry for Mr Craven who was elderly and unwell. It was only supposed to be connected overnight until he could return the following day to install the brackets. He submitted that the heater was gastight and fixed in place.

Consideration of penalty

14. When it comes to imposing penalties in disciplinary cases, the Board's primary considerations are the need to protect the health and safety of the public and maintain industry standards. Any disciplinary penalty should aim to ensure the competency of a practitioner by holding them to account for their offending, assist with their rehabilitation, and deter them and other practitioners from disciplinary offending.

15. The Board considered that Mr Gwynne's conduct was moderately serious. The Board accepted that Mr Gwynne's intentions in connecting the heater had been good and that he had intended that it would only be connected to the gas supply without the securing brackets overnight. However, Mr Gwynne's case illustrated the risks of connecting incomplete installations to the supply even for very short periods of time as sometimes circumstances beyond the gasfitter's control intervened. The public relied on gasfitters as the trained and qualified experts to keep them safe and while many practitioners were motivated by a desire to help their customers, the Board considered it was their responsibility to ensure that no gas installation was connected to the supply unless and until it was fully complete and therefore safe for their customer to use.

16. The Board acknowledged that Mr Gwynne had a previous disciplinary conviction and was therefore not entitled to credit for having an unblemished disciplinary history.

17. The Board considered that a fine was an appropriate penalty in this case and determined that the starting point should be $4,000. There being no grounds to reduce this figure, the Board determined that the final fine should be $4,000.

Costs

18. 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 $25,026.35.

19. The Board determined that Mr Gwynne should have to pay $11,000 towards costs which was around 45% of the total costs.

Publication

20. The Board determined that details of Mr Gwynne's disciplinary offending should be entered on the public register. Any other publication of the Board's orders should be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

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

    i. Pursuant to section 106(1)(f) of the Act, Mr Gwynne pay a fine of $4,000.

    ii. Pursuant to section 107 of the Act, Mr Gwynne pay $11,000 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

23. If Mr Gwynne 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 13 June 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board