Plumbers, Gasfitters and Drainlayers Board

CANNELL v FARRELL

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/13)

Summary

Mathew Farrell, Certifying Plumber, Certifying Gasfitter, was charged with carrying out negligent or incompetent gasfitting. The charge related to the installation of a continuous flow water heater in a tiny house located in Raglan/Whāingaroa.

Mr Farrell pleaded guilty to the charge.

The Board considered Mr Farrell's offending was low in terms of seriousness. Mr Farrell had installed a gas water heater on a tiny house that was non-compliant. He also issued a certificate for the installation which had information missing and wrongly certified that the installation was safe and compliant. The Board found there were no aggravating factors in the case and Mr Farrell was entitled to credit for his guilty plea, cooperation, and lack of any previous disciplinary offending. The Board also recognised that Mr Farrell had proactively undergone training which was also to his credit.

The Board ordered Mr Farrell to pay a fine of $2,100 and pay $5,400 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 **MATHEW FARRELL**
Certifying Plumber, Certifying Gasfitter, of Kirikiriroa/Hamilton

Registered Person

DECISION OF THE BOARD
30 JULY 2024

Hearing:	Held via audio visual link on 12 June 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, Ming-chun Wu, Tofa Suafole Gush, Selwyn Hikuroa
Counsel:	Jessica Ah Koy for the investigator Mr Farrell was self-represented
Legal advisor:	Richard May

Disciplinary hearing

1. On 12 June 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing via audio visual link to consider a complaint by Nicola Earnshaw against Mathew Farrell, Certifying Plumber, Certifying Gasfitter. The complaint related to gasfitting work on a tiny house in Raglan/Whāingaroa.

Guilty plea

2. On 30 April 2024, Mr Farrell pleaded guilty to a charge of negligent or incompetent gasfitting and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Farrell is a Certifying Plumber and Certifying Gasfitter.

    b. In September 2019, Mr Farrell carried out gasfitting work on a tiny house located in Raglan. The work involved the installation of a continuous flow water heater on the exterior of the house and issuing a Gas Safety Certificate and Certificate of Compliance (**Certificate**) for the installation.

    c. Subsequent to Mr Farrell carrying out the work, the tiny house was sold to Ms Earnshaw and relocated to Nelson. In August 2022, Ms Earnshaw engaged a certifying plumber and certifying gasfitter to carry out further work on the house. They inspected the house and advised Ms Earnshaw there were issues with the gasfitting work. Ms Earnshaw subsequently made a complaint to the Board.

    d. The following issues were identified with the installation:

        i. there was no pressure test point installed as required by clause 5.11.4 of AS/NZS 5601.1:2013 (**Standard**)

        ii. there was no isolation device installed which would allow the installation to be isolated from the supply as required by clause G11.3.4 of the New Zealand Building Code (**Code**)

        iii. two 9kg LPG gas cylinders had been used and were insufficient to supply the system, contrary to clause G11.2 of the Code

        iv. because of the lack of pressure test point installed, the installation would not have been commissioned correctly as required by clause 6.11.1 of the Standard.

    e. There were also a number of issues with the Certificate issued by Mr Farrell, including:

i. the gasfitting work had been incorrectly classified as high-risk work when it was general risk

ii. the following information required under the Gas (Safety and Measurement) Regulations 2010 was omitted:

A. the date on which the work was completed

B. the manufacturer's instructions relied on

C. the name of the person who carried out the work

D. the fact that the auto-changeover regulator had been installed

E. the type of pipework used.

iii. the Certificate wrongly certified that the installation was safe, compliant, and able to be connected to the gas supply.

f. Mr Farrell:

i. accepted that he had done the gasfitting work

ii. noted that a temporary test point could be connected to a 15mm plug in the system

iii. accepted that the 9kg gas cylinders were inadequate but explained that he always tells his clients about the problems this could cause and noted that the house was originally in a climate with warmer winters

iv. advised that his name and the date were on the Certificate provided to the original owner of the tiny house when he certified the installation

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

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Farrell had committed a disciplinary offence under section 89(a)(i) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Ms Ah Koy submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and to maintain proper industry standards. She submitted that the principles that were relevant to the assessment of penalty in disciplinary proceedings were the need to ensure rehabilitation, the importance of treating practitioners consistently where possible, and the need to impose the least severe penalty appropriate to ensure the principles and purposes of the disciplinary proceeding were met.

5. Ms Ah Koy submitted that Mr Farrell's offending was low or low-moderate in terms of seriousness. She submitted that while the individual defects with the work were not particularly serious, when all of the defects were combined they amounted to negligent work. She submitted that the work also posed a risk because the pipework could not be isolated and tested meaning the installation could not be commissioned. Finally, the Certificate wrongly certified that the work was safe and compliant.

6. Ms Ah Koy referred the Board to its previous decisions in the cases of *Pidgeon v Hall* (2023/5), *Pidgeon v Lye* (2023/6), *Radovich v Blackman* (2024/3), and *Radovich v Mitchell* (2021/32). In the *Hall* case, Mr Hall pleaded guilty to negligent or incompetent gasfitting in relation to pipework connecting to gas fryers in a restaurant kitchen that was not properly secured to the wall. The Board adopted a starting point for the fine in his case of $1,700. Mr Hall's work was certified by Mr Lye on the basis of photographs alone which did not identify the lack of clips on the pipe, or the lack of a pressure test point and restraints on the fryers. In the case against Mr Lye, the Board adopted a started point for the fine of $4,000. In *Blackman*, Mr Blackman pleaded guilty to certifying gasfitting work carried out by another gasfitter on the basis of photographs and videos where the work was defective. The starting point for the fine in that case was $3,500. Finally, in the *Mitchell* case, Mr Mitchell pleaded guilty to negligent or incompetent gasfitting in relation to the conversion of a LPG installation to natural gas where no appliance regulator was installed. The Board adopted a starting point of $4,500 in his case.

7. Ms Ah Koy submitted that Mr Farrell's case was more serious than the *Hall* case as there were more defects with the work and Mr Farrell also certified the work. She submitted that a starting point for the fine in Mr Farrell's case should be closer to that in the *Lye* case given he had not only carried out the work but also certified it as safe and compliant when it was not. She submitted that the *Blackman* and *Mitchell* cases were also comparable in terms of seriousness and a similar starting point for a fine should be adopted in Mr Farrell's case.

8. Ms Ah Koy submitted that the investigator was not aware of any aggravating factors in Mr Farrell's case. She acknowledged that Mr Farrell had no previous disciplinary history and had cooperated during the investigation and by pleading guilty to the charge.

9. Ms Ah Koy submitted that under section 107 of the Act, the Board could require Mr Farrell to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that the usual starting point for an order of costs was half of the costs and she acknowledged that Mr Farrell may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

10. In his submissions on penalty, Mr Farrell submitted that he should pay a fine and provide the Board with an explanation of what caused the error in this case. He submitted that he had put a temporary test point on the system and commissioned it

before plugging it off. He accepted though that he had not installed a permanent pressure test point or isolation valve. With regard to the Certificate, Mr Farrell submitted that he had incorrectly completed the form which he had given to the original owner of the house. In that form, he had included his name as the gasfitter who carried out the work and the date on which the work was done.

11. Mr Farrell accepted that the work had been negligent and that it was important to uphold the standards that applied to gasfitters and the standards that applied to gasfitting work.

12. Mr Farrell submitted that he had been a little unsure about certifying the work and, in particular, how to classify the work as high, general, or low risk. Given he was unsure, he had defaulted to classifying the work in this case as high risk but he did not enter it on the WorkSafe Electricity and Gas High-Risk Database. Mr Farrell submitted that he had re-issued the Certificate and re-classified it. He submitted that he would like some training on how to classify gasfitting work for the purposes of the Gas (Safety and Measurement) Regulations 2010.

13. Mr Farrell sought name suppression in the case. He advised that his company bore his name and was well-known in Hamilton. He also advised he had an 11 year old child who shared his name and he was concerned that publication could affect his business, family, and his child. He described his personal circumstances to the Board both in terms of his ability to pay any fine and a factor in relation to a family member which he considered was relevant.

14. In response to Mr Farrell's submissions, Ms Ah Koy submitted that without an isolator valve at the pressure regulator, Mr Farrell would not have been able to carry out a pipework test even with a temporary test point.

15. Regarding Mr Farrell's application for name suppression, Ms Ah Koy submitted that the starting point was the principle of open justice and name suppression should only be ordered when it was proper to do so having regard to both the public interest and the interests of any person involved. She submitted that any impact of publication on Mr Farrell, his business, or his child was unlikely to happen or was speculative. Embarrassment or shame were normal consequences of disciplinary proceedings and she submitted that they were insufficient to displace the principle of open justice. She submitted that the investigator opposed Mr Farrell's application.

Decision on penalty

16. 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.

17. Having considered the investigator's submissions and the facts of the case, the Board considered that Mr Farrell's offending in this case was low in terms of seriousness. The Board accepted that Mr Farrell had carried out testing on the installation even if it had not been properly commissioned.

18. The Board found there were no aggravating factors in the case and Mr Farrell's guilty plea and cooperation, and lack of previous disciplinary offending were mitigating factors in his favour. The Board also accepted that Mr Farrell had proactively undertaken training in May 2023 and commended him for that.

19. The Board considered that a fine was an appropriate penalty in this case and determined that the starting point should be $3,500. In recognition of the mitigating factors in Mr Farrell's favour, the Board reduced the fine to $2,100.

20. Recognising Mr Farrell's desire to do some training around classifying gasfitting work, the Board considered whether to impose a training order on him as part of the penalty. However, the Board did not consider there were any appropriate courses available that covered this subject. Instead, it directed Mr Farrell to WorkSafe's website which contained useful information on certifying gasfitting work, including how to classify such work.

Costs

21. 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 $13,545.85.

22. The Board accepted that Mr Farrell's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $5,400 towards costs which was around 40% of the total costs.

Name suppression

23. The Board accepted that it had the power to make non-publication orders suppressing Mr Farrell's details under section 113(3) of the Act. The test to be applied was whether it was proper to do so having regard to the interests of any person and to the public interest.

24. The Board acknowledged Mr Farrell's concerns and his reasons for seeking name suppression but agreed with the investigator that these concerns were both speculative and normal consequences of disciplinary offending. The Board therefore declined Mr Farrell's application.

Publication

25. In accordance with section 74(1)(c)(viii) of the Act, the Board ordered that details of the action taken against Mr Farrell should be recorded on the register of plumbers, gasfitters, and drainlayers. Any other publication of the Board's orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

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

    a. Pursuant to section 106(1)(f) of the Act, Mr Farrell pay a fine of $2,100.

    b. Pursuant to section 107 of the Act, Mr Farrell pay $5,400 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

27. If Mr Farrell is dissatisfied with the whole or any part of this decision or these orders, he may appeal to the District Court under section 162(1)(f) of the Act. Any appeal must be brought within 20 working days from the date on which this formal written decision is received, or within any other timeframe the District Court may allow.

Dated 30 July 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board