Plumbers,
Gasfitters and
Drainlayers Board

JURY v EAST

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/21)

Summary

Paul East, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, was charged with employing, directing, or permitting an unauthorised person to do gasfitting and negligently creating a risk of serious harm or significant property damage through causing gasfitting to be carried out. The charges related to gasfitting work carried out on a boat.

Mr East pleaded guilty to the charges.

The Board considered Mr East's offending was high in terms of seriousness. Gasfitting on vehicles and vessels is higher risk by nature and the error in this case was both very basic and could have had very serious consequences. The Board found there were no aggravating factors in the case and Mr East was entitled to credit for his guilty plea, cooperation, lack of any previous disciplinary offending, remorse, remediation, and changes he had made to his practices.

The Board ordered Mr East to pay a fine of $4,550 and $6,000 towards costs.

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

BETWEEN **MEGAN JURY**

Investigator

AND **PAUL EAST**
Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, of Marlborough/Te Tauihu o te Waka-a-Māui

Registered Person

DECISION OF THE BOARD
16 January 2025

Hearing:	Held on the papers on 17 October 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Martin de Gouw, James Smith, Selwyn Hikuroa, Sue Simons
Counsel:	Madeleine Purcell for the investigator Mr East was self-represented
Legal advisor:	Juliette Philpott

Disciplinary hearing

1. On 17 October 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Peter Fry against Paul East, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to gasfitting undertaken on a boat.

Guilty plea

2. On 18 July 2024, Mr East pleaded guilty to charges of employing, directing, or permitting an unauthorised person to do gasfitting and negligently creating a risk of serious harm to any person or significant property damage through causing gasfitting to be carried out. Mr East also signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr East is a registered and licensed Certifying Plumber, Certifying Gasfitter, and Certifying Drainlayer.

    b. Between 27 July 2023 and 11 August 2023, Mr Fry engaged Mr East to carry out gasfitting work on his boat which was berthed at Waikawa Marina. The gasfitting work included the removal of an existing continuous flow gas hot water heater, the installation of a new gas water heater in a different location, the connection of an existing barbeque to the gas supply, and the installation of all associated pipework.

    c. Mr East engaged a contract worker to assist him with the work. The worker assisted by pulling through new pipes and disconnecting the existing water heater. By disconnecting the water heater, the worker carried out gasfitting work. The worker did not cap off the gas valve when they removed the existing water heater and Mr East failed to identify that they had not done this when he inspected their work.

    d. Only people who are registered and licensed or otherwise authorised may do or assist in doing gasfitting work under section 9 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**). The worker who assisted Mr East did not hold a licence or any form of authorisation at the time they did gasfitting work.

    e. On 22 September 2023, Mr Fry and his family travelled in the boat and stayed away overnight. Mr Fry's wife told him she could smell gas behind the bulkhead where the old water heater had been removed. Mr Fry inspected the area and discovered that the gas valve where the water heater had not been was not capped off and was allowing gas to enter the vessel. The new water heater was also malfunctioning with intermittent firing and surges.

f. Mr Fry reported these issues to Mr East the following day when he returned to the marina. Mr East returned to the vessel the same day and remediated the issues by removing the hose and capping the gas supply valve. He also drilled a hole in the new water heater which was malfunctioning because water was getting into the unit.

g. Mr Fry remained concerned about the gasfitting and engaged another gasfitter to review the work. The other gasfitter inspected the installation and identified issues with the work. Mr Fry subsequently made a complaint to the Board.

h. Samuel Wood, a certifying gasfitter and contractor to the Board, provided a technical assessment of the gasfitting work on the vessel and identified the following issues:

   i. the gas valve was not capped off where the old water heater had been meaning the installation was unsafe, which was contrary to regulation 12(b) of the Gas (Safety and Measurement) Regulations 2010 (**Regulations**)

   ii. a 200mm section of rubber hose connected two sections of copper pipe together under the sink, which was contrary to clause 5.2.3(b) of AS/NZS 5601.2 (**Standard**)

   iii. the regulator was connected using a rubber hose, which was contrary to clause 5.4.1.2 of the Standard

   iv. a gas hose connected to the gas cylinder was unprotected where it passed through the wooden box storing the cylinder, which was contrary to clauses 2.7.1(c), 2.7.5(a), and 2.7.5(e) of the Standard

   v. there was a small leak from the tee connection behind the sink, which was contrary to clause 2.7.1(b) of the Standard

   vi. the gas locker that stored the gas on the flying bridge was inadequate as it was fixed with a copper pipe, which was contrary to clause 2.7.1(c) of the Standard.

i. The defects in paragraph (h)(ii) to (vi) above were existing defects and were not due to the work carried out by Mr East. However, Mr East certified that all parts of the installation complied with the Standard and were safe to connect to the gas supply.

j. Mr Wood assessed the gasfitting work as posing an extreme risk to public health and safety and having the potential to cause significant property damage as the gas pipe had been left uncapped. This risked gas leaking and that risk was increased by the other defects with the work, although these had not been

caused by Mr East. Mr Wood considered that there would have been limited opportunity to assist if a gas leak on the boat had ignited and the vessel was out at sea.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr East had committed disciplinary offences under section 89(g) and 89(b)(ii) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Ms Purcell 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 Purcell submitted that Mr East's offending was highly serious given the risk from the uncapped gas valve was of serious harm to occupants of the boat and significant damage to the vessel. She submitted that the degree of negligence shown by Mr East in this case was high given he had failed to identify the uncapped gas valve despite inspecting the work. Ms Purcell submitted that the technical advisor had considered the risk in this case from the work was "extreme".

6. Mr Purcell submitted that Mr East had said he had not intended to have his worker carry out any gasfitting work. They had been engaged to assist him with feeding hose and handing him tools while he worked in confined spaces. Ms Purcell submitted that as a certifying gasfitter, Mr East should have been aware of what constituted gasfitting and should have taken care to ensure he did not direct an unauthorised person to carry out any work that was gasfitting.

7. Ms Purcell submitted that there were a number of other defects with the work on the vessel which did not comply with the mandatory gas installation standards. While accepting that these defects were pre-existing and not caused by Mr East, Ms Purcell submitted the gas certificate had certified that all parts of the installation were compliant and safe to connect to the gas supply. She submitted that the certification of gasfitting work was an important check and safeguard and provided important assurances to property owners and wider public that the work was safe. Ms Purcell submitted that Mr East's actions in issuing an incorrect certificate supports the view that his inspection of the work on the vessel was grossly negligent.

8. Ms Purcell referred the Board to its previous decisions in the cases of *Pidgeon v Rudolph* (2024/9), *Radovich v Hale & Cartwright* (2020/30), and *Radovich v Kench* (2022/6). In the *Rudolph* case, Mr Rudolph had pleaded guilty to a charge of negligently creating a risk of serious harm or significant property damage in relation

to the installation of a gas fire in an existing fireplace and chimney. The installation was non-compliant and unsafe, and had caused damage to the property. Mr Rudolph had not inspected the work on the installation carried out by others. The Board considered that Mr Rudolph's conduct was highly serious and adopted a starting point for the fine in his case of $6,000. Mr Purcell submitted that Mr East's failure to inspect the work carried out by his worker was similar to Mr Rudolph's. However, Mr East had also instructed an unauthorised person to carry out gasfitting which meant a higher starting point was warranted in his case.

9. In *Cartwright & Hale*, Mr Cartwright had pleaded guilty to charges of negligently creating a risk of serious harm through gasfitting and issuing a false or misleading gas certificate. Mr Hale, a tradesman gasfitter under Mr Cartwright's supervision, had installed a continuous flow water heater inside a portable bathroom. Mr Hale had certified that the installation was safe and compliant without viewing the it. The water heater was not room-sealed which created a risk of toxic flue gases discharging into the bathroom. No fine could be imposed in his case but the Board stated a starting point of $8,000 would have been adopted had a fine been imposed. Ms Purcell submitted that while Mr Cartwright had not undertaken any inspection of his supervisee's work, Mr East had inspected the work on the vessel but had clearly done so negligently given he missed the uncapped gas valve and the other pre-existing defects with the installation.

10. In *Kench*, Mr Kench had pleaded guilty to negligent or incompetent gasfitting and issuing a false or misleading gas certificate. The work involved the replacement of a burst gas hot water cylinder and connection to a gas fire. There was no ventilation in the cupboard where the replacement cylinder was installed created the risk of unsafe levels of carbon monoxide being produced and the cupboard overheating. There were also inadequate clearances between the gas flue and surrounding surfaces risking heat transferring to combustible surfaces. The Board considered Mr Kench's conduct was serious given the risks of harm to people or property damage and adopted a starting point for the fine of $6,000. Ms Purcell submitted that Mr East's conduct was more serious than Mr Kench's as the defects created a more significant risk of harm. Mr East had also instructed an unauthorised person to do gasfitting work.

11. Having regard to the cases, Ms Purcell submitted that a fine with a starting point between $7,000 and $8,000 was appropriate in the case. She submitted that Mr East should also be required to undertaken further training in certification or a gasfitting refresher to mitigate the risk of him engaging in similar conduct in the future.

12. Ms Purcell submitted that the investigator was not aware of any personal aggravating factors in the case and a discount was available to reflect Mr East's guilty plea, cooperating in the proceedings, and lack of previous disciplinary history. She acknowledged that Mr East had accepted accountability for the defects with the

work and had expressed remorse that his worker had undertaken unauthorised work and he had failed to identify that the gas valve had not been capped off.

13. Ms Purcell submitted that under section 107 of the Act, the Board could require Mr East 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 acknowledged that Mr East may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

14. In his submissions on penalty, Mr East submitted that the appropriate penalty was reimbursement for the owner of the costs of having the work remediated. He submitted that this would be the best outcome for the owner.

15. Mr East accepted that his conduct was very serious because it could have caused serious harm or property damage. He submitted that he had returned to the boat to cap the gas valve as soon as he was told about it. He also submitted that he had since put systems in place to ensure it would not happen again including checklists and training and he would only employ people who were licensed or held an authorisation to carry out gasfitting going forward.

16. Mr East described his personal circumstances for the Board and provided the Board with supporting information.

17. Mr East asked the Board to consider name suppression in his case. He submitted that he had recently started a new business with a business partner and publication of his name could have a negative impact on the business. He also submitted that his business partner had a long-established reputation and he was concerned that publication of his name in association with this case could reflect badly on his business partner's reputation.

18. In closing, Mr East submitted that he was very sorry that this had happened. He submitted that it had been a big learning experience for him and he was doing all he could to ensure it never happened again.

19. In response to Mr East's application for name suppression, Ms Purcell submitted that the starting point for consideration of name suppression was the principle of open justice. However, she submitted that it was open to the Board to order suppression if it considers it was proper to do so having regard to both the interests of the person and the public interest.

20. Ms Purcell submitted that the investigator opposed Mr East's application because he had not provided any evidence to support his claim that naming him would have a negative impact on his business partner. She submitted any such concern was therefore speculative and it was unlikely Mr East's business partner's name would be brought into the case.

Decision on penalty

21. 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.

22. Having considered the parties' submissions and the facts of the case, the Board determined that Mr East's offending was high in terms of seriousness. Gasfitting in vessels and vehicles is higher risk by nature given the enclosed spaces involved and the inclusion of sleeping facilities in many cases. Leaving a gas valve uncapped was a serious and very basic error and the Board found it concerning that this was not picked up by Mr East during his final inspection of the work.

23. The Board accepted that there were no aggravating factors in the case and Mr East was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending. Mr East had also expressed remorse, offered to remediate the work, and described steps he had taken to ensure this situation would not occur again.

24. The Board considered that the appropriate penalty was a fine with a starting point of $7,000. Taking into account the mitigating factors in Mr East's favour, the Board reduced the fine to $4,550.

Costs

25. 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 $15,226.80.

26. The Board accepted that Mr East's guilty plea and cooperation had helped to keep the costs down and that a further discount was appropriate to recognise his financial circumstances. The Board determined that he should pay $6,000 towards costs which was around 40% of the total costs.

Name suppression

27. While the Board understood and sympathised with Mr East's reasons for seeking name suppression, it was not satisfied that they reached the threshold for granting name suppression in the case. His application was therefore declined.

Publication

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

Board orders

29. Being satisfied that Mr East was guilty of disciplinary offences under sections 89(g) and 89(b)(ii) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr East pay a fine of $4,550.

    b. Pursuant to section 107 of the Act, Mr East pay $6,000 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 East be published on the register.

Appeal

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

Dated 16 January 2025

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board