Plumbers, Gasfitters and Drainlayers Board

PIDGEON v ANDREWS

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/25)

Summary

Matiu Andrews, Certifying Plumber, was charged with causing sanitary plumbing to be carried out in a negligent or incompetent manner in relation to the installation of a hot water cylinder at a residential property in Methven/Piwakawaka.

Mr Andrews pleaded guilty to the charge.

The Board considered Mr Andrews' offending was serious. While most of the defects with the work had not been major, no tempering valve had been installed on the cylinder which was connected to an uncontrolled heat source created a very serious risk to people at the property. The Board accepted there were no aggravating factors in the case and Mr Andrews was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary history. The Board also considered that it was relevant that Mr Andrews had paid the costs of having the work remediated.

The Board ordered Mr Andrews to pay a fine $3,500 and pay $3,700 towards costs.

2024/25
Matiu Andrews
November 2024

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

BETWEEN **MICHAEL PIDGEON**

Investigator

AND **MATIU ANDREWS**
Certifying Plumber, of Methven/Piwakawaka

Registered Person

DECISION OF THE BOARD
10 FEBRUARY 2025

Hearing:	Held in Wellington/Te Whanganui-a-Tara on 27 November 2024
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Selwyn Hikuroa, Beth Healy, Tofa Suafole Gush
Counsel:	Elena Mok for the investigator Mr Andrews was self-represented
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 27 November 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Bret Hofmans against Matiu Andrews, Certifying Plumber. The complaint related to sanitary plumbing undertaken under Mr Andrews' supervision at residential premises in Methven/Piwakawaka.

Guilty plea

2. On 3 October 2024, Mr Andrews pleaded guilty to a charge of causing sanitary plumbing to be carried out in a negligent or incompetent manner and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Andrews is a registered and licensed Certifying Plumber.

    b. In August 2022, Mr Hofmans engaged Mr Andrews' company to install a hot water cylinder at his property. Before carrying out the work, Mr Andrews contacted a local plumbing supplier to purchase the hot water cylinder and was told that the type of cylinder he required, a wetback hot water cylinder, was not available.

    c. Phillip Linfoot is a Tradesman Plumber employed by Mr Andrews' company. Mr Andrews was Mr Linfoot's supervisor and was therefore responsible for all sanitary plumbing work he carried out.

    d. On 12 August 2022, Mr Linfoot went to Mr Hofman's property to install the hot water cylinder. Mr Linfoot rang the local plumbing supplier about getting a wetback hot water cylinder to install. He was told that there was only a solar hot water cylinder available and it was not appropriate for the installation. Mr Linfoot subsequently installed the solar hot water cylinder and associated pipework to the metro log burner at Mr Hofmans' property.

    e. After the installation was completed, Mr Hofmans noticed a leaking connection on the pipework and heard noises coming from the pipes. In October 2022, Mr Hofmans engaged another plumbing company to inspect the installation which identified a number of issues. Mr Hofmans provided a copy of the installation inspection report to Mr Andrews who offered to rectify the work. However, Mr Hofmans engaged the company which had carried out the inspection to remediate the work and recovered the cost from Mr Andrews.

    f. Mr Hofmans subsequently made a complaint to the Board.

    g. Hamish Alexander, a Certifying Plumber and technical advisor to the Board, identified the following issues with the installation carried out by Mr Linfoot:

        i. there was a leaking connection on the hot water cylinder pipework, which breached clause G12.3.7(b) of the New Zealand Building Code (**Code**)

ii. no tempering valve was installed on the hot water supply to sanitary fixtures which breached clause G12.3.6 of the Code

iii. the hot water cylinder was not seismically restrained but was left sitting on top of the attic beams and insulation which breached clauses B1.1 and B1.3.3 of the Code

iv. a solar hot water cylinder had been installed instead of a wetback hot water cylinder which breached G12.2 of the Code

v. the hot water thermosiphon pipework within the ceiling was not insulated which breached clause H1.3.4 of the Code

vi. the flow and return lines to the hot water cylinder had tight radius copper bends which breached clause G12.3.7 of the Code

vii. the copper flow and return pipework for the hot water cylinder thermosiphon system were undersized which breached clause G12.3.7(a) of the Code

viii. the copper flow and return pipework for the hot water cylinder thermosiphon system were not adequately supported which breached clause G12.3.7(b) of the Code

ix. there was insufficient gradient on the flow and return pipework for the hot water cylinder thermosiphon system which breached clause G12.3.7(a) of the Code.

h. Mr Alexander assessed the risk posed by these defects as extreme because of risk of scalding due to the lack of a tempering valve.

i. Mr Andrews denied any knowledge of the issues with the work before being advised of the issues uncovered in the inspection by the second plumbing company. He advised he has since implemented new processes around supervision in response to the complaint.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Andrews had committed a disciplinary offence under section 89(a)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

Penalty and costs submissions

4. On behalf of the investigator, Ms Mok 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 Mok submitted that Mr Andrews' conduct sat at the upper end of the spectrum in terms of seriousness. There had been a number of issues with the installation of the hot water cylinder. While acknowledging that no harm had occurred in this case, Ms Mok submitted that the leaking connection and unrestrained cylinder had posed a significant risk to people and property, while the lack of a tempering valve had posed an extreme risk to people. She submitted that Mr Andrews had not taken any steps to inspect the installation and had no supervision processes in place at the time the work was carried out. She submitted that while Mr Andrews paid for the costs of the remedial work, he had not gone to the property to view the installation when advised of the issues.

6. Ms Mok submitted that a fine with a starting point in the vicinity of $6,000 was appropriate in this case, along with an order requiring Mr Andrews to complete a training course around supervision.

7. Ms Mok referred the Board to its previous decisions in the cases of *Radovich v Frogley*, 2019/13, *Thomas v O'Flaherty*, 2020/4, and *Thomas v Jackson*, 2020/13. In *Frogley*, Mr Frogley was found guilty of causing negligent or incompetent sanitary plumbing in relation to the replacement of a hot water cylinder carried out by two people under his supervision. The Board considered the offending was serious due to the multiple defects that posed a risk to both people and property. The starting point for the fine in the case was $5,000-$5,500. Mr Frogley was also required to undertaken training. Ms Mok submitted that Mr Andrews' offending was more serious than in *Frogley* because there were more defects.

8. In *O'Flaherty*, Mr O'Flaherty was found guilty of causing negligent or incompetent sanitary plumbing and directing an unauthorised person to carry out sanitary plumbing in relation to work on a house extension. The homeowner raised numerous concerns while the work was being carried out but they were not addressed and the remedial plumber had to start the work all over again. The Board considered Mr O'Flaherty's offending was serious as he had shown a lack of understanding or awareness of his responsibilities as a certifier, employer, and business owner. A starting point of $5,000 was adopted for the fine in his case. Ms Mok submitted that Mr Andrews' offending was more serious than Mr O'Flaherty's because there was no suggestion that the issues with the work in Mr O'Flaherty's case posed a safety risk.

9. Finally, in *Jackson*, Mr Jackson pleaded guilty to causing or carrying out negligent or incompetent sanitary plumbing in relation to the replacement of a hot water cylinder carried out by himself and a supervisee. The tempering valve was installed incorrectly and created a risk that the cylinder would overheat and explode. The Board considered the offending was moderately serious and adopted a starting point for the fine of $2,000. Ms Mok submitted that Mr Andrews offending was more serious than Mr Jackson's because of the greater number of defects. In addition, Mr Andrews

had not overseen the work and had not provided any supervision when the work was carried out.

10. Ms Mok submitted that the investigator was not aware of any aggravating factors personal to Mr Andrews and acknowledged it was open to the Board to reduce the level of any fine to recognise Mr Andrews' guilty plea, cooperation, and lack of previous disciplinary offending. Ms Mok submitted that the Board may also consider that it was relevant that Mr Andrews' company had reimbursed Mr Hofmans for the costs of the repairs. In addition, Mr Andrews had said that he has since improved his supervision processes, though she submitted that he had not provided any information about the specific steps he had taken.

11. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Andrews 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 it was for the Board in its discretion to decide whether that figure should be increased or decreased. She accepted that it was open to the Board to recognise Mr Andrews' guilty plea had saved the costs of a hearing in this matter.

12. In his submissions on penalty, Mr Andrews submitted that he was willing to undertake refresher training. He submitted that he did not think a fine would help anybody concerned with this matter and went on to describe his personal and financial circumstances, providing the Board with information in support. Mr Andrews submitted that, given his financial position and commitments, imposing a fine in this case would impose a substantial burden on him which was not warranted in the circumstances.

13. Mr Andrews submitted that he had tried to deal with the circumstances of this matter to the best of his abilities at the time and described the job as a challenging one. He submitted that he had since met with Mr Hofmans and apologised, and explaining how the wrong hot water cylinder came to be installed. He had also paid for the work to be remediated and had spoken to the employee who had carried out the work and issued him with a verbal warning.

14. In relation to his supervision, Mr Andrews submitted that he now stringently reviewed all work carried out by any employee and provided constant, hands-on training. He also discussed issues around compliance at all staff meetings and on jobs. Finally, he made sure all apprentices kept up to date with their learning and courses.

15. In response to Mr Andrews' submissions, Ms Mok submitted that the information he had provided did indicate that he was experiencing financial difficulties and this was something the Board could take into account when determining the level of any fine and costs order.

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 the 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 parties' submissions and the facts of the case, the Board determined that Mr Andrews' offending was serious. While the Board did not consider the other issues with the installation were major, the lack of a tempering valve on the hot water cylinder was troubling. This was because the cylinder was connected to a wetback which was an uncontrolled heat source meaning the temperatures the water could be heated to could be extremely dangerous.

18. The Board was satisfied there were no aggravating factors in this case and Mr Andrews was entitled to credit for his guilty plea, cooperation, and lack of any previous disciplinary history. The Board also recognised that Mr Andrews had paid the cost of remediation of the work.

19. The Board did not consider that a training order around supervision was warranted in this case, but directed Mr Andrews to the Board's website where he could find a number of resources to help support him to carry out supervision successfully.

20. The Board considered that a fine was the appropriate penalty in this case and adopted a starting point of $5,000. The Board acknowledged that this starting point was considerably higher than the starting point in the *Jackson* case, but this was because that case had involved an ordinary hot water cylinder and not one connected to an uncontrolled heat source. Recognising the mitigating factors in the case, the Board reduced the fine to $3,500.

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 $9,488.52.

22. The Board's approach to ordering costs under section 107 of the Act recognises that complaints, investigations, and disciplinary processes are 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.

23. The Board accepted that Mr Andrews' guilty plea had saved the cost of a full hearing which had helped to keep costs down. Accordingly, the Board determined that Mr Andrews should pay $3,700 towards costs which was around 40% of the total costs.

Publication

24. In accordance with the requirements of the Act, the Board ordered that details of the action taken against Mr Andrews 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

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

    a. Pursuant to sections 106(1)(f) of the Act, Mr Andrews pay a fine of $3,500.

    b. Pursuant to section 107 of the Act, Mr Andrews pay $3,700 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

26. If Mr Andrews 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 10 February 2025

Signed



_____

Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board