Plumbers, Gasfitters and Drainlayers Board

PIDGEON v LINFOOT

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/26)

Summary

Phillip Linfoot, Certifying Plumber, was charged with carrying out sanitary plumbing in a negligent or incompetent manner in relation to the installation of a hot water cylinder at a residential property in Methven/Piwakawaka.

Mr Linfoot pleaded guilty to the charge.

The Board considered Mr Linfoot's offending was serious. There had been numerous defects with the work, some of which created a serious risk of harm to people and property. While Mr Linfoot had only been a tradesman plumber at the time he carried out the work, some of the issues were plumbing fundamentals and his work had fallen well below the standard expected of a trained and qualified practitioner. The Board accepted there were no aggravating factors in the case and Mr Linfoot was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary history. He was also clearly remorseful and the Board accepted he had probably been working under difficult circumstances at the time.

The Board ordered Mr Linfoot to pay a fine $2,900 and pay $3,500 towards costs.

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

BETWEEN **MICHAEL PIDGEON**

Investigator

AND **PHILLIP LINFOOT**
Certifying Plumber, of Ashburton/Hakatere

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 Linfoot 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 Phillip Linfoot, Certifying Plumber. The complaint related to sanitary plumbing undertaken at residential premises in Methven/Piwakawaka.

Guilty plea

2. On 20 October 2024, Mr Linfoot pleaded guilty to a charge of carrying out sanitary plumbing in a negligent or incompetent manner and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Linfoot is a registered and licensed Certifying Plumber. At the time he carried out the work concerned, he was a licensed Tradesman Plumber. His supervisor was Matiu Andrews and he was employed by Mr Andrews' company.

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

    c. On 12 August 2022, Mr Linfoot went to Mr Hofman's property to install the hot water cylinder. Mr Linfoot also spoke to the local plumbing supplier about getting a wetback hot water cylinder but 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.

    d. 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.

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

    f. 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.

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

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Linfoot 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 Linfoot's conduct sat at the upper end of the spectrum in terms of seriousness. There had been a number of issues with the installation

including the leaking connection, the unrestrained cylinder, and the lack of a tempering valve which had posed a significant risk of harm to people and property damage. Ms Mok acknowledged that as Mr Linfoot's supervisor, Mr Andrews was ultimately responsible for Mr Linfoot's work but she submitted that the extent of the issues with the installation did raise concerns about Mr Linfoot's competency. This was particularly so given he had proceeded to install a solar hot water cylinder despite knowing a wetback cylinder was required.

6. Ms Mok submitted that a fine with a starting point in the vicinity of $5,000 was appropriate in this case. She submitted that the Board may also wish to consider ordering Mr Linfoot to undertake further training to provide some assurance that similar issues would not arise going forward.

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 Linfoot's offending was comparable to Mr Frogley's. While there were more defects with Mr Linfoot's work and some posed a risk to health and safety, Mr Linfoot was not a supervisor or a certifying plumber and was less experienced than Mr Frogley.

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 Linfoot's conduct was comparable with Mr O'Flaherty's. While he was charged with only one offence and was not a supervisor, the extent of the issues with his work was greater and there was no suggestion that the issues with the work in *O'Flaherty* had 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 moderately serious and adopted a starting point for the fine of $2,000. While Mr Linfoot was not a supervisor, there were significantly more

defects with the work he had carried out and some of those defects had posed a significant risk justifying a higher starting point for the fine in Mr Linfoot's case.

10. Ms Mok submitted that the investigator was not aware of any aggravating factors personal to Mr Linfoot and acknowledged it was open to the Board to reduce the level of any fine to recognise Mr Linfoot's guilty plea, cooperation, and lack of previous disciplinary offending.

11. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Linfoot 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 that Mr Linfoot's guilty plea had saved the costs of a hearing in this matter.

12. In his submissions on penalty, Mr Linfoot submitted that a fine of $2,000 was appropriate in the circumstances. Mr Linfoot submitted that at the time he carried out this work, he had been a tradesman plumber employed by Mr Andrews company and under his supervision. Mr Linfoot submitted that the working environment at Mr Andrews' company had been difficult and employees were required to do things Mr Andrews' way. He submitted that the reason he had installed the solar hot water cylinder at Mr Hofmans was because Mr Andrews had instructed him to install it after he had rung him to say the supplier had said there was no wetback cylinder available.

13. Mr Linfoot acknowledged the defects in relation to the tight radius copper bends and the undersized flow and return pipework for the hot water cylinder, and the issues these defects created. However, he submitted that after installing the cylinder in one day and getting it operational, he had told Mr Andrews they would need to return to alter the pipework to accommodate a tempering valve before the fire could be used. He had also advised him that the cylinder would need to be strapped and the pipework insulated and supported. He submitted that Mr Andrews had responded that they had already gone over what he had allowed for in his quote for the work and it would be fine.

14. Mr Linfoot submitted that in all of the cases that had been referred to by the investigator the practitioner involved had been a certifier. In plumbing and drainlaying, he submitted that the certifier was responsible for ensuring work had been performed competently and complied with the requirements in regulations made under the Building Act 2004.

15. Mr Linfoot submitted that he was aware how serious this matter was and he hoped the Board would understand the work environment and his circumstances in this case which had caused him to take regrettable shortcuts. Mr Linfoot submitted that he had stopped working for Mr Andrews after this incident and had taken some time

away from plumbing to consider what he wanted to do with his future. After some time, he submitted that he decided to sit his certifying exam so he could take responsibility for his own work. He decided he would start his own business if he passed so that he would never be put in the position of being forced to take shortcuts again.

16. Mr Linfoot submitted that he had since started his own business and described his personal circumstances. He asked the Board to consider granting name suppression in his case submitted that he felt ashamed. He submitted that he deeply regretted the work he had done at Mr Hofmans and said his time working for Mr Andrews company had taught him many valuable lessons. He assured the Board he would not appear before them again. He submitted that he now takes great pride in the work he does and has done the best possible work he can to attempt to rid his name of the stain that this incident had caused. He apologised and thanked the Board for their time.

17. In response to Mr Linfoot's submissions, Ms Mok submitted that the principle of open justice was the starting point for consideration of Mr Linfoot's request for name suppression. She submitted that the Board should only grant name suppression where it was of the opinion that it was proper to do so having regard to both the interests of the person and the wider public. She submitted that shame or reputational damage were ordinary consequences of disciplinary offending and were not a proper basis on which to depart from the principle of open justice. She submitted that Mr Linfoot's request should therefore be declined.

Decision on penalty

18. 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.

19. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Linfoot's offending was serious. There were numerous defects in this case, some of which posed a risk to people and property. Mr Linfoot was a trained and qualified tradesman plumber at the time he carried out this work and some of the issues with his work were plumbing fundamentals. The Board considered that Mr Linfoot should have known better. Certainly now that he is a certifier, the Board hopes Mr Linfoot will only carry out work that is within his competency.

20. The Board was satisfied there were no aggravating factors in the case and Mr Linfoot was entitled to credit for his guilty plea, cooperation, and lack of any previous disciplinary history. The Board also recognised that Mr Linfoot was clearly remorseful

and the circumstances in which he had been working at the time sounded very unsatisfactory.

21. The Board considered that a fine was the appropriate penalty in this case and adopted a starting point of $4,500. The Board acknowledged that this starting point was considerably higher than the starting point in the *Jackson* case, but this was because the present case had involved a hot water cylinder connected to an uncontrolled heat source. Recognising the mitigating factors in the case, the Board reduced the fine to $2,900.

Costs

22. 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, prosecution, and hearing. The Board was provided with a schedule of estimated costs for the investigation, prosecution and hearing amounting to $8,995.02.

23. 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 that 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 for these activities which are not recovered directly from practitioners found guilty of disciplinary offences have to be borne by every other practitioner.

24. The Board accepted that Mr Linfoot's guilty plea had saved the costs of a hearing which had helped reduce the overall costs of this matter. Accordingly, the Board determined that Mr Linfoot should pay $3,500 towards costs which was around 40% of the total costs.

Name suppression

25. The Board accepted that the test for granting name suppression was whether it was proper to do so have regard to the interests of the person making the request and the wider interests of the public in open and transparent justice.

26. The Board accepted that Mr Linfoot felt deeply about this matter and understandably did not want his name and reputation to be tarnished by it. However, Mr Linfoot's concerns are common to all practitioners charged with disciplinary offending and therefore do not constitute special grounds such that it was proper to order name suppression in this case. The Board also considered that publication of a full account of this case would set out all the of circumstances of this matter and the role Mr Linfoot played in it.

27. The Board therefore declined Mr Linfoot's application for name suppression.

Publication

28. In accordance with the requirements of the Act, the Board ordered that details of the action taken against Mr Linfoot 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 Linfoot 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 Linfoot pay a fine of $2,900.

    b. Pursuant to section 107 of the Act, Mr Linfoot pay $3,500 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 Linfoot be published on the register.

Appeal

30. If Mr Linfoot 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



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board