Plumbers,
Gasfitters and
Drainlayers Board

RADOVICH v BLACKMAN

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/3)

Summary

Michael Eric Blackman, Certifying Plumber, Certifying Gasfitter, was charged with causing negligent or incompetent gasfitting work and carrying out negligent or incompetent gasfitting work. The charges related to gasfitting work carried out at several properties in Northland by Mr Blackman's supervisee.

Mr Blackman pleaded guilty to the charges.

The Board considered Mr Blackmans's conduct was moderately serious. His remote supervision practices were insufficient to ensure that the work being carried out by his supervisees was performed competently, resulting in defects. The Board accepted there were no aggravating factors in the case and that Mr Blackman was entitled to credit for pleading guilty, being cooperative throughout the process, having no previous disciplinary offending, being remorseful, taking proactive steps to ensure the work had been remediated, and for making changes to his practices.

The Board ordered Mr Blackman to pay a fine of $2,450 and pay $7,900 towards costs.

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

BETWEEN **WAYNE RADOVICH**

Investigator

AND **MICHAEL ERIC BLACKMAN**
Certifying Plumber, Certifying Gasfitter, of Marlborough

Registered Person

DECISION OF THE BOARD
25 MARCH 2024

Hearing:	Held in Wellington/Te Whanganui-a-Tara on 14 February 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Martin De Gouw, Barry Willcox, Selwyn Hikuroa, Deborah Cranko
Counsel:	Elena Mok for the investigator Mr Blackman was self-represented
Legal advisor:	Richard May

Disciplinary hearing

1. On 14 February 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Richard Thomas against Michael Blackman, Certifying Plumber, Certifying Gasfitter. The complaint related to gasfitting work carried out by Mr Blackman's supervisee at several properties in Northland.

Guilty plea

2. On 31 October 2023, Mr Blackman pleaded guilty to two charges of causing negligent or incompetent gasfitting work and carrying out negligent or incompetent gasfitting work, and signed an agreed summary of facts, a copy of which is attached to this decision.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Blackman had committed disciplinary offences 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 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, treat practitioners consistently where possible, and to impose the least severe penalty appropriate in the circumstances.

5. Ms Mok submitted that Mr Blackman's conduct in this case was moderately serious since it risked the safety of others because Mr Blackman was not present when his supervisees commissioned or tested the work at multiple properties and there were defects with the work. She submitted that while Mr Blackman had taken some steps to supervise remotely, for example reviewing photos, his supervision practices were insufficient to enable him to certify that the gasfitting work at each property was safe and compliant. She submitted that the Board has previously observed remote supervision may be sufficient in some circumstances, certifiers still need to have adequate systems and processes in place to ensure that the supervision being provided in such circumstances is adequate.

6. Ms Mok referred the Board to its previous decisions in the cases of *Radovich v Frogley* (2022/1), *Radovich v J* (2020/20) and *Thomas v Choi* (2019/7). In the *Frogley* case, the practitioner pleaded guilty to failing to comply with a term or condition of his licence for not providing adequate supervision, and to issuing false or misleading gas certificates. In that case, the Board adopted a starting point for the fine of $4,000. In the *J* case, the practitioner was found guilty of negligent or incompetent gasfitting for issuing gas certificates on the basis of testing done by a trainee. He did not attend the property while the testing and commissioning took place. The Board

adopted a starting point for a fine of $2,500. In *Choi,* Mr Choi pleaded guilty to negligent or incompetent gasfitting work and to filing a false or misleading return. Mr Choi certified gasfitting work carried out in an apartment complex which he had not been involved with or overseen. There were several non-compliance issues with the work and Mr Choi only visited the site once, did not test the work before certifying that it was compliant.

7. Ms Mok submitted that Mr Blackman's case was most comparable with *Frogley* and *Choi* and that a similar starting point to those cases should be adopted for the penalty in this case. She submitted that, as with *Frogley*, Mr Blackman's remote supervision practices were insufficient to ensure the work had been performed competently and there were defects found with the work. The work in the present case was more prolonged than that in *Frogley* and covered multiple properties with multiple gas certificates being issued. Unlike Mr Frogley, Mr Blackman did not issue the gas certificates knowing the work was defective, and the defects with the work in this case were less significant. Similar to *Choi,* Mr Blackman certified gasfitting work as compliant when there were defects with the work. While the present case involved multiple properties, Mr Choi's case only involved one. However Mr Choi had failed to take any steps at all to ensure the work was compliant, unlike Mr Blackman.

8. Ms Mok submitted that the appropriate penalty in this case was a fine with a starting point of $3,500 to $4,000. She submitted the investigator was not aware of any aggravating factors in this case, and Mr Blackman was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending.

9. Ms Mok submitted that the Board could require Mr Blackman 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 actual costs. Ms Mok submitted that the Board may wish to consider a reduction from the starting point depending on its assessment of the extent of Mr Blackman's cooperation and acceptance of responsibility for the offending.

10. Mr Blackman accepted responsibility and expressed remorse for what had occurred. He accepted that a fine was the likely penalty in his case. He submitted that at the time of the offending he was comfortable with the ability of his supervisee and he believed he could carry out the work to an acceptable standard. He submitted that he believed he had made the best attempts possible to supervise remotely and was of the view that this was an acceptable level of supervision. He explained that he had only supervised in this way to help out a friend while he tried to find a new supervisor for his business.

11. He stated that he had taken steps to consult the Board's website and familiarise himself with acceptable supervision practices. He submitted that he had also stopped supervising and had taken steps to confirm that the work had been remediated by another gasfitter. He described the impact the complaint and proceedings had had

on his mental health and provided some information about his financial circumstances.

12. Mr Blackman responded to a question from the Board about whether he would consider supervising again but not remotely. He responded that he might consider it if he worked for himself again but that he was cautious about taking on responsibility for the work of others.

Decision on penalty

13. 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.

14. The Board considered Mr Blackman's conduct in this case was moderately serious. The Board accepted that Mr Blackman's remote supervision practices were insufficient to ensure the work was being done competently but accepted that the defects with the work were more compliance related.

15. The Board considered that there were no aggravating factors in this case and Mr Blackman's early guilty plea, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour. It also accepted that Mr Blackman was remorseful, that he had taken proactive steps to check that the work had been remediated and that he had made changes to his practices. The Board was satisfied that Mr Blackman had identified where his supervision failings were and had taken steps to educate himself on the topic of supervision.

16. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $3,500. Recognising the mitigating factors, the Board reduced the fine to $2,450.

Costs

17. 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 $19,764.

18. The Board accepted that Mr Blackman's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $7,900 towards costs which was around 40% of the total costs.

Publication

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

Board orders

20. Being satisfied that Mr Blackman was guilty of disciplinary offences 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 Blackman pay a fine of $2,450.

    b. Pursuant to section 107 of the Act, Mr Blackman pay $7,900 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

22. If Mr Blackman 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 25 March 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board

SUMMARY OF FACTS

In the matter of a disciplinary hearing in respect of MICHAEL ERIC BLACKMAN

Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1. The registered person, Michael Eric Blackman, is a registered and licensed certifying plumber and certifying gasfitter (registration number [redacted].

2. At the relevant time, Mr Blackman was employed by Dave Hesketh Plumbing Limited (**Hesketh Plumbing**), a business in the Far North of the North Island. In May 2022, Mr Blackman moved to Marlborough and left Hesketh Plumbing, but remained a shareholder in the business.

3. Joshua Knight is a journeyman plumber and journeyman gasfitter employed by Hesketh Plumbing. At the relevant times, Mr Blackman was Mr Knight's supervisor for gasfitting work.

4. On 30 August 2022, the Plumbers, Gasfitters, and Drainlayers Board (**Board**) received a confidential complaint from a practitioner raising concerns about Mr Blackman's supervision practices. The complaint alleged that Mr Blackman was signing off gasfitting work completed by practitioners based in the Far North while Mr Blackman was residing in Marlborough.

5. On 3 November 2022, Richard Thomas, a certifying plumber, certifying gasfitter, and certifying drainlayer, who is engaged by the Board as a contractor, submitted a written complaint to the Board.

6. On 14 November 2022, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Wayne Radovich to investigate the complainant against Mr Blackman.

7. Brett McQuarrie is a registered and licensed certifying plumber and certifying gasfitter. He is employed by the Board as a Technical Advisor. Mr McQuarrie provided a technical assessment of the gasfitting work done at the properties based on all of the information and documentation available to him.

FACTS OF THE CASE

8. When he worked for Hesketh Plumbing, Mr Blackman was the only certifying gasfitter at the company. When he left Hesketh Plumbing in May 2022 and moved to Marlborough, Mr Blackman agreed to retain supervision of four of his supervisees, as Hesketh Plumbing did not have another certifying gasfitter who could do so.

9. Mr Blackman supervised journeyman gasfitter Mr Knight and three other practitioners remotely. All practitioners worked in the Far North region, while Mr Blackman resided in the South Island.

10. Mr Blackman's supervisees would send files to him via Dropbox of the gasfitting work they had competed, showing photographs of the installations and their workmanship. This would include videos of them testing and commissioning the gasfitting work.

11. As Mr Blackman's supervisee, Mr Knight's gasfitting work was carried out under Mr Blackman's control and direction. As Mr Knight's supervisor for gasfitting work, Mr Blackman, as a certifying gasfitter, was required to ensure Mr Knight's gasfitting work:

    a. was performed competently;

    b. was subject to appropriate safety measures; and

    c. complied with the requirements of the relevant regulations, including regulations made under the Gas Act 1992.

12. Mr Blackman was also required to ensure that Mr Knight (among other things):

    a. was competent to perform the tasks he undertook;

    b. was adequately supervised while carrying out gasfitting work;

    c. complied with all regulations.

13. Between May 2022 and November 2022, Mr Knight attended the following properties across Northland to carry out gasfitting work (together, **the properties**):

    a. 23 Old Hospital Road, Whangaroa (**23 Old Hospital Road**);

    b. 13 Du Fresne Place, Russell (**13 Du Fresne Place**);

    c. 26 Te Akau Drive, Russell (**26 Te Akau Drive**);

    d. 33 Ngawha School Road, Kaikohe (**33 Ngawha School Road**);

    e. 14 Commercial Street, Kawakawa (**14 Commercial Street**).

14. Mr Knight carried out a variety of gasfitting work at the properties, including:

    a. *23 Old Hospital Road:* Installing a Rinnai A24 continuous flow water heater (**CFWH**), together with an 8kg automatic changeover regulator and two 18kg LPG cylinders, and associated pipework.

    b. *13 Du Fresne Place*: Replacing a gas hob in the kitchen and connecting it to the gas supply.

    c. *26 Te Akau Drive*: Installing a Rinnai A26 CFWH on an external wall of the dwelling, together with an 8kg automatic changeover regulator mounted below the deck, along with associated 45kg LPG cylinders and pipework.

d. *33 Ngawha School Road:* Installing two Rinnai A26 CFWHs, one at the rear of the kitchen and one at the rear of the bathroom, along with associated regulators, LPG cylinders, and pipework.

e. *14 Commercial Street*: Installing a new 16L CFWH on an external wall, together with a regulator, 45kg LPG cylinders, and associated pipework, and also connecting a Parmco electric cooker with a gas cooktop in the kitchen.

15. Mr Blackman issued Gasfitting Certificates of Compliance – Gas Safety Certificates (**gas certificates**) for the gasfitting work Mr Knight carried out at the properties. Mr Blackman did not attend the properties at any point to physically inspect or test the gasfitting work himself. He relied solely on photographs/videos from Mr Knight and contact with Mr Knight in issuing the gasfitting certificates, and in confirming the installations were safe and compliant. Mr Blackman also certified the work despite not being the person who had connected the installations to the gas supply.

CAUSING NEGLIGENT OR INCOMPETENT GASFITTING WORK

16. As a journeyman gasfitter, Mr Knight was not authorised to do gasfitting work without supervision and he was not authorised to certify gasfitting work.

17. As Mr Knight's supervisor, Mr Blackman had control over the way that Mr Knight carried out the work and was responsible for ensuring that the work was adequately supervised.

18. Mr Blackman caused the gasfitting work at some of the properties to be carried out in a negligent or incompetent manner because there were the following issues with the gasfitting work done:

a. *23 Old Hospital Road*: The LPG cylinders installed were the incorrect size for the input rating of the water heater, contrary to Table J2 of AS/NZS 5601.1:2013, which specifies the vaporisation capacity of the gas cylinder based on the gas cylinder weight.

b. *13 Du Fresne Place*: No test point was installed at the gas hob appliance, contrary to clause 5.11.4(d) of AS/NZS 5601.1, which specifies that pressure test points should be accessible or adjacent to the inlet of the gas appliance if no test point is incorporated in the gas appliance.

c. *33 Ngawha School Road*: Some of the gas pipework that was installed did not have UV protection from degradation, contrary to Table 4.1 of AS/NZS 5601.1.

d. *14 Commercial Street*: There was an inadequate pipe seal where the pipework entered the weatherboards from the outside, contrary to clause 5.3.9(b) of AS/NZS 5601.1.

NEGLIGENT OR INCOMPETENT GASFITTING WORK

19. Between May 2022 and November 2022, Mr Blackman certified gasfitting work carried out by Mr Knight by signing gas certificates for the gasfitting work carried out at each of the

properties. In signing the gas certificates, Mr Blackman certified that that the gasfitting work that had been done was safe and compliant.

20. By issuing gas certificates in this manner, Mr Blackman carried out negligent or incompetent gasfitting. This was because he was not in a position to certify that the work was safe and compliant because:

    a. The work was carried out by Mr Knight, a journeyman gasfitter;

    b. Mr Blackman was not present when Mr Knight tested and/or commissioned the work; and

    c. Mr Blackman's remote supervision, using Dropbox files and photographs, was insufficient to ensure that Mr Knight's testing and/or commissioning of the work was undertaken correctly.

21. As he supervised the gasfitting work remotely, Mr Blackman did not have enough information and oversight of Mr Knight's work to be satisfied that the work was safe and compliant and to be in a position to issue these gas certificates. The gas certificates issued for the properties certified that the work at the properties was safe and compliant despite the issues with some of the installations, as specified above.

MR BLACKMAN'S COMMENTS

22. In response to the complaint, Mr Blackman stated that, when he left Hesketh Plumbing and moved to the South Island, he was the only certifying plumber and certifying gasfitter, so he agreed to retain the supervision of his four supervisees.

23. In describing his supervision practices, Mr Blackman explained that supervisees would send files to him via Dropbox of the work they had completed. These files would show photos of the installations and workmanship and would also include videos of their testing. He would supervise work via phone or video conference and believed his supervision processes were adequate.

24. Mr Blackman said the system he uses demonstrates a record of an ability to effectively supervise, as the files show the work undertaken, including testing the gas. Further, he said that the work he supervises remotely is largely in residential new builds. In relation to gasfitting work generally, Mr Blackman said there are parts of gasfitting work that he would not certify remotely, such as commercial gasfitting work.

Date: 31 October 2023

[redacted]

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Michael Blackman

[redacted]

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Jessika Tuhega

Counsel for the investigator