Plumbers,
Gasfitters and
Drainlayers Board

PIDGEON v LOWE

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/5)

Summary

Martin James Lowe, Tradesman Plumber, was charged with carrying out drainlaying in a manner contrary to an enactment. The charge related to drainlaying work carried out at a property in Auckland/Tāmaki Makaurau.

Mr Lowe pleaded guilty to the charge.

The Board considered Mr Lowe's conduct was low in terms of seriousness. The Board accepted there were no aggravating factors in the case and that Mr Lowe was entitled to credit for pleading guilty, having no previous disciplinary history, remediating the work at his own cost, and being remorseful. The Board also recognised other factors in Mr Lowe's case which made it unusual.

The Board made no penalty order in this case but ordered Mr Lowe to pay $2,400 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 **MARTIN JAMES LOWE**
Tradesman Plumber, of Auckland/Tāmaki Makaurau

Registered Person

DECISION OF THE BOARD
25 MARCH 2024

Hearing:	Held in Wellington/Te Whanganui-a-Tara on 15 February 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, Selwyn Hikuroa, Martin de Gouw, Deborah Cranko
Counsel:	Elena Mok for the investigator Mr Lowe was self-represented
Legal advisor:	Richard May

Disciplinary hearing

1. On 15 February 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Jacqueline Hanna against Martin James Lowe, Tradesman Plumber. The complaint related to drainlaying work carried out at 30 Tautari Road, Orakei, Auckland/ Tāmaki Makaurau **(property**).

Guilty plea

2. On 13 October 2023, Mr Lowe pleaded guilty to a single charge under section 89(a)(ii) of the Plumbers, Gasfitters, and Drainlayer Act 2006 (**Act**) of carrying out drainlaying in a manner contrary to an enactment. Mr Lowe also signed an agreed summary of facts, the material parts of which were:

    a. In March 2022, Ms Hanna engaged Mr Lowe to fix a blocked and leaking foul water drain at the property. Ms Hanna had previously engaged Mr Lowe to do sanitary plumbing at the property.

    b. Mr Lowe saw that the drain was too small, was back-falling, and had previously been partially cut. Mr Lowe unblocked the drain and removed the existing pipe. He then replaced it with a wider pipe and increased the fall.

    c. At that time, Mr Lowe informed the tenants at the property that the foul water drain was connected to the drain under the deck. As a temporary solution, Mr Lowe blocked off the deck drain to avoid foul odours and advised them that a more permanent solution would be required.

    d. In May and June 2022, Ms Hanna contacted Mr Lowe asking him to come back to the property to complete the work which involved reinstating the concrete surrounding the drain. Mr Lowe never returned to the property and in July 2022 Ms Hanna made a complaint to the Board.

    e. On 13 October 2022, Mr Lowe returned to the property and completed the concreting.

    f. Only people who are authorised to do drainlaying under section 10 of the Act may do or assist in doing drainlaying. Mr Lowe was not authorised to do drainlaying at the time he carried out the work at the property.

    g. Mr Lowe advised both Ms Hanna and the tenants at the property, one of whom was a plumber, that the work should be done by a drainlayer. However, he stated he did the work for Ms Hanna as a favour to keep close contacts to a minimum during the pandemic.

    h. Mr Lowe stated that the work was done “to code” and that he consulted with a drainlayer before and during the work. He stated he was in regular contact with tenant about returning to complete the concreting but the weather and

limitations on when the tenant was available for him to return to the property meant he did not complete the work.

i. Mr Lowe said the area around the drain was backfilled with sand and made safe. When he did return to do the concrete work, Mr Lowe did it free of charge.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Lowe had committed a disciplinary offence under section 89(a)(ii) of the 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, 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 Lowe's conduct was low to moderate in terms of seriousness. She submitted his conduct had the potential to pose a risk given it involved an unauthorised person working on a foul water drain. In addition, Ms Mok submitted that Mr Lowe was aware he was not authorised to carry out the work. Ms Mok acknowledged there were no known defects with the work, the work was limited in scope, and it was a one-off incident. Ms Mok submitted that a fine with a starting point in the vicinity of $2,000 to $2,500 was appropriate having regard to the circumstances of this case and penalties imposed in other, similar cases.

6. Ms Mok referring to the cases of *Radovich v Harris* (2022/22), *Radovich v Douglas* (2022/18), and *McGregor and Thomas v Taylor* (2021/9). In all three cases, registered and licensed plumbers carried out restricted drainlaying work. The starting point for fines in the cases ranged from $2,500 to $3,000.

7. Ms Mok submitted that there were no aggravating factors personal to Mr Lowe and that a reduction to the starting point of the fine may be available to reflect his eventual guilty plea.

8. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Lowe to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. Ms Mok submitted that the starting point for an order of costs was typically half of the actual costs, but this was a matter for the Board to determine in its discretion. She submitted that the Board could consider a reduction from the starting point in recognition of Mr Lowe's guilty plea but noted that he had not engaged in the investigation at all and his engagement in the prosecution had been intermittent.

9. Mr Lowe submitted that the appropriate penalty in his case was training. He submitted that this would show his willingness to improve and acceptance of responsibility for what he had done.

10. Mr Lowe submitted that his conduct was low to moderate in terms of seriousness and he understood why he was appearing before the Board. However, he submitted that the work had been done to the correct standard. He stated that the work had been done using 100mm PVC pipe which he had cut straight, deburred, and used primer and glue to ensure that pipe was correctly fitted into each fitting. He submitted that this type of work was a basic part of plumbing which he was competent to do. He submitted that he had also engaged with a drainlayer prior to starting the job and during the job, providing him with photos throughout and there were no defects with the work he had done.

11. Mr Lowe submitted that he had returned to the property to concrete up the hole with the correct size pebble finish so it matched the rest of the driveway. He stated he had done this at his own cost. Mr Lowe submitted he would only do work he was licensed to do going forward.

12. Mr Lowe described his personal circumstances and the impact the complaint had had on his work and personal life. He submitted that the job had only been done with the best intentions for the customer and he had fully explained to them that he was not a drainlayer. However, he had felt pushed into do the work because the tenants had a baby and wanted to keep their close contacts to a minimum because of the pandemic. They had also trusted him to do the job correctly and with care for the property. He submitted that he understood he should not have done the work and certainly would not be doing it again in the future.

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 that Mr Lowe's conduct in this case was low in terms of seriousness. The Board accepted that this was a one-off incident where Mr Lowe did work he knew he should not do, but did it with the best intentions. The Board also accepted that Mr Lowe had told the property owner the work required a drainlayer but had succumbed to pressure and ultimately carried out the work himself. Finally, the Board recognised that Mr Lowe had taken steps to ensure that the work was done correctly by talking to a drainlayer throughout the job, including providing him with photos of the work. While not condoning practitioners carrying out restricted work they are not qualified and authorised to do, the Board considered that Mr

Lowe's case was unusual and there were a number of extenuating circumstances which meant his case was not a serious or reckless breach of his responsibilities as a registered plumber.

15. The Board determined there were no aggravating factors in this case and that Mr Lowe was entitled to credit for his guilty plea and lack of previous disciplinary offending. The Board accepted that Mr Lowe was clearly remorseful, had remediated the work at his own cost, and was unlikely to repeat his conduct. Finally, the Board recognised Mr Lowe's difficult financial circumstances and the significant impact this matter had had on him personally.

16. The Board determined that a fine was the appropriate penalty with a starting point of $2,000. However, given the particular and unusual circumstances of Mr Lowe's case, the Board determined that it would impose no penalty in the case.

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 $12,024.25.

18. The Board accepted that Mr Lowe's guilty plea had avoided the costs of a full hearing in this matter. In addition, the Board recognised that Mr Lowe's difficult financial circumstances which limited his ability to pay an order of costs. In the circumstances, the Board determined he should pay $2,400 towards costs which was around 15% of the total costs.

Publication

19. The Board determined that details of Mr Lowe's disciplinary offending should be entered on the public register in the usual way.

20. Any publication of the Board's orders in this case would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers. However, the Board was of the view that the unusual circumstances of this case meant there would be little value in bringing this case to the public's attention.

Board orders

21. Pursuant to section 106(1)(h) of the Act, the Board declines to make any penalty order against Mr Lowe in this matter.

22. Pursuant to section 107 of the Act, the Board orders Mr Lowe to pay $2,400 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

24. If Mr Lowe 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