Plumbers, Gasfitters and Drainlayers Board

PIDGEON v WHITHAM

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2025/5)

Summary

Jonathan Whitham, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, was charged with breaching a term or condition of his licence in relation to his supervision and employing, directing, or permitting unauthorised people to carry out restricted work. The charges related to the replacement of wastewater pipes at a residential property in Whakatāne.

Mr Whitham pleaded guilty to the charges.

The Board considered Mr Whitham's offending was at the high end of moderately serious as it involved failings in respect of a number of employees carrying out work over an extended period of time. The Board considered that this showed a systematic failing on Mr Whitham's part in relation to his supervision and oversight responsibilities. The Board accepted there were no aggravating factors in the case and Mr Whitham was entitled to credit for his guilty plea, cooperation, lack of previous disciplinary history, and changes to his practices.

The Board ordered Mr Whitham to pay a fine $4,400, undertake training on supervision at his own cost, and pay $20,000 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 **JONATHAN WHITHAM**
Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, of Taupō

Registered Person

DECISION OF THE BOARD
1 September 2025

Hearing:	Held on the papers on 23 July 2025
Members sitting:	Martin de Gouw (Chair), Selwyn Hikuroa, Beth Healy, Sue Simons, Jason O'Connor
Counsel:	Sam McMullan for the investigator Louise Foley for Mr Whitham
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 23 July 2025, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Allan and Patricia MacAulay against Jonathan Whitham, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to drainlaying work carried out at the MacAulay's residence in Whakatāne.

Guilty plea

2. On 20 May 2025, Mr Whitham pleaded guilty to one charge of failing to comply with a term or condition of his drainlaying licence in relation to supervision, and three charges of employing, directing, or permitting unauthorised people to do drainlaying and gasfitting work. Mr Whitham also signed an agreed summary of facts, the material parts of which were as follows:

    a. In January 2024, the MacAulay's engaged Mr Whitham's company to carry out drainlaying work at their property in Whakatāne. The work primarily involved replacing the waste pipes at the property running between the house and septic tank.

    b. Two of Mr Whitham's employees carried out the work at the property. One of the employees was authorised to carry out drainlaying under a trainee authorisation. The trainee required direct presence supervision and his supervisor, Philip Hall, had nominated Mr Whitham to provide that supervision on his behalf. The second employee was engaged as a labourer and did not hold any authorisation to do drainlaying work.

    c. Between 24 January and 4 April 2024, Mr Whitham's employees attended the MacAulay's property where they removed the old waste pipes and laid new ones. The labourer was not authorised to do this work and the trainee, while authorised, was not directly supervised while doing this work. As this was outside the terms of his authorisation, the trainee was therefore not authorised to do this work.

    d. While the drainlaying work was being carried out at the property, the auto changeover regulator on the MacAulay's gas cylinders failed. Another employee of Mr Whitham's attended the property and replaced the regulator. The employee was authorised to carry out gasfitting under an exemption, but was required to work only in Mr Whitham's direct presence. Mr Whitham was not present when the employee replaced the regulator. As this was outside the terms of his authorisation, the employee was not authorised to do this work.

    e. While the work was being carried out at the MacAulay's, Mr Whitham's Operations Manager attended the property. The Operations Manager did not

hold any authorisations to do restricted work. While at the property one day the Operations Manager installed a gully trap. Installing a gully trap is restricted drainlaying and he was therefore not authorised to do this work.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Whitham had committed disciplinary offences under sections 89(c) and 89(g) of the Act.

Investigator's submissions on penalty and costs

4. On behalf of the investigator, Mr McMullan submitted that the purpose of disciplinary proceedings was not to punish but to ensure public protection and maintenance of proper industry standards through both specific and general deterrence. He submitted that the penalty imposed on Mr Whitham should correct his behaviour while being consistent with other decisions of the Board and be the least severe penalty appropriate to achieve the relevant principles and purposes.

5. Mr McMullan submitted that Mr Whitham's offending was moderately serious. He submitted that ensuring trainees and people working under exemptions were properly supervised was critical to ensuring their work was carried out safely and correctly and the public were protected. Mr Whitham's supervision failings in this case involved two employees doing restricted drainlaying work over an extended period of time. He submitted that, given this, Mr Whitham could not claim his failure to properly supervise his employees was the result of a one-off oversight. In addition, two other employees of the company also carried out restricted work when unauthorised.

6. Mr McMullan submitted that Mr Whitham had benefitted financially from the work undertaken by his employees. He also submitted that the work had had a significant impact on the MacAulays who had been left with incomplete work after eight months that was in need of remediation.

7. Mr McMullan submitted that consistency with similar cases was an important consideration when determining penalties in disciplinary matters. He referred the Board to its previous decisions in *Pidgeon v Hall*, 2025/2, *Thomas v Sharp*, 2022/11, and *Pidgeon v O'Flaherty*, 2023/17. In *Hall*, the supervisor of Mr Whitham's trainee pleaded guilty to failing to ensure his trainee only work in Mr Whitham's direct presence while carrying out drainlaying. The Board considered his conduct was moderately serious and adopted a starting point of $3,000 for the fine in the case. In *Sharp*, Mr Sharp failed to provide adequate supervision of two trainees in his employment, one of whom required direct presence supervision. The Board adopted a starting point of $3,000 for the fine in the case. Finally, in *O'Flaherty*, Mr O'Flaherty pleaded guilty to directing two unauthorised employees to do sanitary plumbing work. The starting point for the fine in the case was $4,000.

8. Mr McMullan submitted that Mr Whitham's breaches were more serious than *Hall*, *Sharp*, and *O'Flaherty* as they involved more employees indicating that, at a minimum, his systems and process were deficient. In addition, two of Mr Whitham's employees required direct presence supervision to carry out restricted work and two held no authorisations at all but had also carried out restricted work. In the circumstances, Mr McMullan submitted that a higher starting point fine in the range of $4,500 - $5,500 was appropriate. Mr McMullan submitted that Mr Whitham should also be required to undertake training on supervision.

9. Mr McMullan submitted that the investigator was not aware of any aggravating factors personal to Mr Whitham. In addition, he was entitled to credit for his cooperation and lack of any previous disciplinary offending. Mr McMullan submitted that while Mr Whitham had pleaded guilty to the charges and this had saved the need for a defended hearing, any credit for this should be tempered by the fact that the guilty pleas had come late in the proceedings.

10. Mr McMullan submitted that under section 107 of the Act, the Board could require Mr Whitham to pay a reasonable sum towards the costs and expenses of the investigation, prosecution, and hearing. He submitted that the starting point for an order of costs was typically half of the costs though it was a matter for the Board in its discretion to determine. Mr McMullan submitted that any reduction from the starting point to recognise Mr Whitham's guilty plea needed to recognise that the plea had been late and only made after the investigator's evidence had been prepared and filed. In addition, there had been two pre-hearing teleconferences and, at Mr Whitham's request, a meeting with the investigation's technical advisor.

Mr Whitham's submissions on penalty and costs

11. On behalf of Mr Whitham, Ms Foley submitted that Mr Whitham had been incorrect in his understanding about the authorisation his gasfitter employee held. He had thought an exemption under supervision was the correct authorisation for someone between trainee and a gasfitter. He now realised that his employee should have help registering as a restricted gasfitter. Ms Foley submitted that this would have allowed the employee to do the gasfitting work he had carried out, though Mr Whitham accepted the employee had not been on that authorisation. She submitted that the fact that the employee could have been a registered restricted gasfitter showed that the risk from this person working unsupervised was minimal.

12. With regard to his other employees, Ms Foley submitted that the trainee drainlayer had been a qualified plumber and gasfitter and Mr Whitham had not understood that he would still require direct presence supervision for his first 12 months for drainlaying. Mr Whitham was aware his labourer could not undertake drainlaying and had not been aware he had been doing so until he had seen the evidence from the MacAulays that they had seen him gluing pipes. She submitted that Mr Whitham had

never directed him to do this but accepted that his employee had overstepped his directions when they were short staffed. With regard to his Operations Manager installing the gully trap, Mr Whitham accepts that he may have asked him to sort the issue out but had never intended that the employee would install the gully trap himself.

13. Ms Foley submitted that Mr Whitham's approach to supervising his staff was based on 15 years in the industry and what he had seen others do. She submitted it had been a shock to him to realise he had misunderstood the requirements and he now understood the different categories of licence and was imposing the correct supervision arrangements. She submitted that a significant amount of time had now passed since the work at the MacAulays and Mr Whitham had implemented new policies based on what he had learnt. While Mr Whitham was willing to do any training the Board ordered, he was confident that he now understood his obligations and had appropriate systems in place.

14. With regard to penalty, Ms Foley submitted that Mr Whitham understood the importance of supervision and had been checking his employees' work. She submitted that while the offending involved four employees, it was the same mistake of misunderstanding in relation to all of them. She submitted that Mr Whitham's company had suffered financial losses in relation to the job and noted that he had always been willing to complete the work for the MacAulays, but they had not been able to agree on the scope of the work.

15. Ms Foley said that by reference to the previous cases cited by the investigator, a starting point for any fine of $3,500 was appropriate and accepted by Mr Whitham.

16. Ms Foley accepted that the usual starting point for an order of costs was half the actual costs incurred but did not accept that Mr Whitham's guilty plea had been late. She submitted that Mr Whitham had indicated earlier in 2025 that he was willing to plead guilty to three of the charges and that she had been in frequent contact with the investigator's lawyer and timeframes for filing evidence had been extended to allow these discussions to occur. She submitted that the bulk of the costs associated with briefing the investigator's evidence related to a charge which was subsequently withdrawn, and Mr Whitham should not be held responsible for briefing a charge which the investigator then withdrew. She submitted that a $5,000 contribution towards costs was appropriate in the circumstances.

Investigator's submissions in reply

17. In reply to Mr Whitham's submissions, Mr McMullan submitted that Mr Whitham's failure in this case had not been the same mistake applied to four employees. Mr Whitham's failures had covered supervision in relation to two employees and employing, directing, or permitting unauthorised people to do restricted work in respect of two other employees.

18. Mr McMullan submitted that the investigator was put to significant costs responding to a large number of requests on Mr Whitham's behalf including for disclosure, clarification, and responding to various resolution proposals which were not accepted. There was also preparation for, and attendance at a meeting with the investigator's technical advisor which had been arranged at Mr Whitham's request.

19. With regard to the costs of briefing witnesses, Mr McMullan submitted that at no time did Mr Whitham agree any of the facts with the investigator. This necessitating the investigator filing evidence to prove every element of all offences charged. This involved lengthy statements from both complainants covering work extended over the course of nine months and statements from the investigator and the technical advisor. A large amount of documentation was also required to be attached to the investigator's statement given Mr Whitham did not agree with any of the facts.

20. Mr McMullan submitted that the investigator rejected the submission that the bulk of the evidence related to a charge that was subsequently withdrawn. He submitted that the evidence to support the withdrawn charge added minimally to the evidence required to prove the four charges Mr Whitham subsequently pleaded guilty to.

Mr Whitham's submissions in reply

21. In response to the investigator's submission that a significant portion of the costs in this case arose from responding to requests by Mr Whitham, Ms Foley submitted that Mr Whitham was entitled to full disclosure and to know the charges against him. Ms Foley accepted that the meeting between Mr Whitham and the technical advisor had been at Mr Whitham's instigation and for his benefit. She then repeated her submission that the bulk of the costs for briefing witnesses would have related to the charge that had been withdrawn rather than the charges Mr Whitham ultimately pleaded guilty to.

22. While accepting that a contribution of $5,000 towards costs was optimistic given the amount of costs, Ms Foley submitted that 40% or 50% of actual costs was not just and was not warranted in light of Mr Whitham's genuine attempts to understand and resolve the charges against him. She submitted that $10,000 along with any penalties was sufficient to ensure Mr Whitham learnt from this case.

23. Finally, Ms Foley sought name suppression of Mr Whitham's company in the decision. She submitted that Mr Whitham's company had been sold to a new entity and identifying the company's name could create confusion and impact on Mr Whitham's business partners.

Investigator's submissions in reply

24. Referring to the investigator's previous submissions in reply, Mr McMullan submitted that Mr Whitham was not correct that the bulk of the costs of briefing the witnesses

related to the withdrawn charge. He submitted that all the evidence contained in the witnesses statements related to the charges Mr Whitham had accepted.

25. With regard to Mr Whitham's application for suppression of his company's name, Mr McMullan submitted that the default position in disciplinary proceedings is that publication will be appropriate in the interests of open justice. The Board should only make suppression orders when it was proper to do so having regard to the interests of the person and the public. He submitted that reputational damage was an ordinary consequence of disciplinary offending and Mr Whitham had not provided any evidence on the potential impact publication would have on his company. For that reason, the investigator opposed the application for name suppression.

Decision on penalty

26. 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.

27. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Whitham's offending was at the higher end of moderately serious. The offending had involved failings in relation to a number of employees working over an extended period of time. In addition, Mr Whitham's failings had related to both his supervision obligations and allowing unauthorised people to carry out restricted work. The Board was particularly concerned that Mr Whitham had said he had relied on his understanding based on what he had seen over 15 years working in the industry. The Board concluded that this showed that Mr Whitham had clearly had poor systems and processes in place, if he had any at all.

28. The Board found there were no aggravating factors in the case and Mr Whitham was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending. The Board also accepted that Mr Whitham had said he had since made changes to his practices to ensure the mistakes would not be repeated.

29. The Board considered that a fine was the appropriate penalty and adopted a starting point of $5,500 to reflect the number and nature of the charges. Recognising the mitigating factors in this case, the Board reduced the fine to $4,400.

30. In light of Mr Whitham's previous misunderstanding of his responsibilities around supervision, the Board determined that Mr Whitham should do some training on supervision to help him ensure his systems and processes were now correct and robust.

Costs

31. 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 $50,283.10.

32. The Board accepted that Mr Whitham's guilty plea had avoided the costs of a full defended hearing. The plea had been late but the Board also recognised that one of the charges against Mr Whitham had been withdrawn. In the circumstances the Board determined that Mr Whitham should receive the usual discount on costs and ordered that he pay $20,000 towards costs which was around 40% of the total costs.

Name suppression

33. The Board accepted that an order for name suppression requires particular disadvantage on the part of the practitioner such that it outweighs the normal presumption of publication in the interests of open justice. The Board did not accept that Mr Whitham had provided evidence of particular hardship that would justify granting the suppression order sought and the application was declined. However, it is not the Board's practice to publish the names of individuals or companies involved in complaints and investigations if their identities are not material to the charges. For this reason the Board has not identified the name of Mr Whitham's company or the names of the employees involved.

Publication

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

35. Being satisfied that Mr Whitham was guilty of disciplinary offences under sections 89(c) and 89(g) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Whitham pay a fine of $4,400.

    b. Purusant to section 106(1)(e) and 106(2)(c) of the Act, Mr Whitham attend training on supervision at his own cost which he must complete in order to renew his practising licences after the 2025-2026 licensing year.

c. Pursuant to section 107 of the Act, Mr Whitham pay $20,000 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

36. If Mr Whitham 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 1 September 2025

Signed



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Martin de Gouw
Chair
Plumbers, Gasfitters and Drainlayers Board