

Before the Building Practitioners Board

	BPB Complaint No. 26576
Licensed Building Practitioner:	Ben Griffiths (the Respondent)
Licence Number:	BP 134173
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry:	Complaint
Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	23 April 2025
Decision Date:	14 May 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor
Mr C Lang, Building Surveyor and Quantity Surveyor

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

Disciplinary Finding:

The Respondent **has not** committed a disciplinary offence.

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Summary

- [1] The Respondent carried out some but not all of the work associated with an alteration. His engagement came to an end as a result of the main contractor, to whom he was subcontracted, being removed from the project. A subsequent contractor reported issues with his building work. The Board decided that whilst there were some areas of concern, overall, the issues complained about did not reach the threshold outlined by the Courts for it to take disciplinary action.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Auckland, have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act; and
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, it would be inquiring into:
- (a) the quality and compliance of the framing and cladding at the front entry of the dwelling as set out in the report from [OMITTED] on pages 62 to 64 of the Board's files; and
 - (b) whether a change of cladding from direct fix to a cavity system required a building consent to be issued before the associated building work was carried out.

¹ Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

Evidence

- [5] The Board must be satisfied that, on the balance of probabilities, the disciplinary offences alleged have been committed³. Under section 322 of the Act, the Board has relaxed rules of evidence, which allow it to receive evidence that may not be admissible in a court of law.
- [6] The complaint related to phase one of a two-phase project. The Respondent was involved in stage one as a subcontractor to a main contractor but did not proceed to stage two, which was to be completed under separate consent, as a result of a dispute between the main contractor and the owner. A different Licensed Building Practitioner (LBP) completed stage two. That LBP identified issues with the Respondent's work. Those issues formed the basis of the Board's investigation.
- [7] The Respondent gave evidence that he was both carrying out and supervising the building work. His general position was that the issues identified with his work were either not in the scope of his stage one engagement, were not complete, or were completed or covered over by others. Included were the issues identified with framing on a front entry wall, as follows:
- No insulation to exterior wall*
 - No structural bolt fixings to bottom plate / slab connection*
 - No DPC beneath bottom plate*
 - No structural connection of door sill to concrete slab*
 - No concrete sill support to front door frame (filled with expandable foam)*
 - No vermin strip to base of cladding cavity (solid batten used)*
 - No gap between cladding and block (fitted tight)*
 - Studs at 750mm centres in lieu of 600mm centres for cladding*
 - No scribe between weatherboard and block*
- [8] The report from the replacement LBP noted that the Respondent's front entry wall building work appeared to be complete because it had been covered over and painted. The Respondent gave evidence that the building work was not complete when he left the site and was not ready to be painted. He stated that the painting occurred after he had left the site. The replacement LBP confirmed the painting had been done out of sequence.
- [9] The Board was also investigating an area of exterior cladding to determine if the Respondent had been negligent with regard to a change of cladding from direct fix to a cavity system contrary to the building consent. The area in question was approximately 5 m² and, according to the Respondent, it had been packed out to align with other cladding as opposed to being installed on a cavity.

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [10] The Respondent also stated he had gone back and rectified issues, some of which he classified as “oversights” after he had been informed of them, and that he would have attended to the issues noted as part of his building work on stage two had he been able to continue with the building work.

Consideration

- [11] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁴ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁵ test of negligence.⁶ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁷ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.
- [12] The same threshold test applies to consideration of an allegation of a failure to build in accordance with a building consent.
- [13] It was with respect to the threshold test that the Board decided that the Respondent had not committed a disciplinary offence. In short, it has found that whilst there were issues with the building work carried out or supervised by the Respondent, the contraventions did not reach the threshold set out by the Courts, which was described by Justice Gendall in *Collie v Nursing Council of New Zealand*⁹ as:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] “Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness”.

⁹ [2001] NZAR 74

- [14] In *Pillai v Messiter (No 2)*,¹⁰ an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, the test was described as:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [15] On that basis, the Board decided, notwithstanding that there were areas of concern with his building work, it would not sanction the Respondent. The Respondent should note that, but for his willingness to return and rectify work and the possible covering over of work by others, a different decision may have been made.

Signed and dated this 20th day of May 2025.



Mr M Orange
Presiding Member

¹⁰ (1989) 16 NSWLR 197 (CA) at 200