

Before the Building Practitioners Board

	BPB Complaint No. 26690
Licensed Building Practitioner:	Christoper Scott Casha (the Respondent)
Licence Number:	BP 135610
Licence(s) Held:	Roofing Membrane – Roof Membrane, Torch on Roof

Draft 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:	Board Inquiry following a Complaint
Hearing Type:	On the Papers
Hearing and Draft Decision Date:	3 June 2025
Finalised Draft Decision Date:	10 July 2025
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
	Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director

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** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

The Respondent is fined \$1,000 and ordered to pay \$700 costs. A record of the disciplinary offending will be recorded on the Public Register for three years.

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Summary of the Board’s Decision

- [1] The Respondent failed to provide a Record of Work (ROW) on completion of restricted building work. He is fined \$1,000 and ordered to pay \$700 costs. The disciplinary finding will be recorded on the Public Register for three years.

The Charges

- [2] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar’s Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies. Having received the report, the Board decided that regulation 9 applied to some but not to all of the allegations.
- [3] On 13 January 2025, the Complainant withdrew the complaint, following receipt of the ROW. The disciplinary process and the Board’s jurisdiction under the Act are inquisitorial. They do not rely on a Complainant to present or prosecute a case

against a Respondent. This is provided for in the Act and in Complaints Regulations, which state that if a Complainant does not wish to proceed with a complaint, then the Board may proceed with its investigations by way of a Board Inquiry.

- [4] The Board decided to continue with the matter as a Board Inquiry because the ROW was only provided after a complaint had been made.

Regulation 10 Decision

- [5] In this matter, the disciplinary charge the Board resolved to further investigate¹ was that the Respondent may, in relation to building work at [OMITTED], have failed, without good reason, in respect of a building consent that relates to restricted building work that he carried out or supervised, to provide the homeowner or the Territorial Authority (section 88(2) of the Act) with a ROW, on completion of the restricted building work, in accordance with section 88(1) and contrary to section 317(1)(da)(ii) of the Act.

Regulation 9 Decisions

- [6] The Board noted grounds for a further complaint in relation to a possible breach of section 314B(b) of the Act, contrary to section 317(1)(h) of the Act. However, with regard to that, the Board decided that regulation 9(f)(ii) of the Complaints Regulations applied. It provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (f) the investigation of it is—*
(ii) unnecessary;

- [7] The Respondent is licensed for Roofing Membrane Area of Practice 4 and 5. In evidence, the Respondent said he supplied and installed Diamond Solar Rib Maxx long-run roofing, along with Membrane Roofing, which was outside of his Area of Practice. However, because the matter has been dealt with by way of a Draft Decision process, the Board decided that it would not further investigate the issue. If the Respondent elects to have the matter heard at an in-person hearing, then the Board may include the ground of discipline in the charges to be determined. The Board strongly advises the Respondent to be mindful in future about the restricted building work he is licensed to undertake.

Draft Decision Process

- [8] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.

¹ 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.

- [9] Ordinarily, the Board makes a decision having held a hearing.² However, the Board may depart from its normal procedures if it considers doing so would achieve the purposes of the Act and it is not contrary to the interests of natural justice to do so.³
- [10] In this instance, the Board has decided a formal hearing is not necessary. The Board considers there is sufficient evidence before it to allow it to make a decision on the papers. However, there may be further evidence in relation to the matter the Board was unaware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

Evidence

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.⁴ 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.

Failure to Provide a Record of Work

- [12] There is a statutory requirement under section 88(1) of the Building Act 2004 for an LBP to provide a ROW to the owner and the territorial authority on completion of restricted building work⁵ unless there is a good reason for it not to be provided.⁶

Did the Respondent carry out or supervise restricted building work

- [13] The Respondent was engaged to carry out and/or supervise building work on a new residential dwelling under a building consent. His work included building work on the roof, which is restricted building work because it forms part of the external moisture management system of a residential dwelling.⁷ Because he carried out or supervised restricted building work, he was obliged to provide a record of work on its completion.

Was the restricted building work complete

- [14] The Respondent's restricted building work was carried out and/or supervised between July 2024 and September 2024. That was when completion occurred, and it was when a ROW was due.

² Regulation 10 of the Complaints Regulations.

³ Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁶ Section 317(1)(da)(ii) of the Act

⁷ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

- [15] The Board notes the Respondent dated his ROW 3 October 2024, further confirming he considered the work complete at that date and was in a position to provide the homeowner and the Territorial Authority with the required information, but failed to do so.

Has the Respondent provided a Record of Work

- [16] The Respondent agreed to provide the ROW on 2 October 2024, via email to the Complainant. However, he failed to do so, then did not respond to follow-up requests by the Complainant.
- [17] On 13 January 2025, the Complainant advised he had received the ROW from the Respondent and wished to withdraw the complaint. The Respondent had supplied his ROW to the Building Consent Authority on 2 January 2025.
- [18] The Respondent should note the requirement is that an LBP provide a ROW on completion of their restricted building work. Neither the owner nor the Territorial Authority has to demand one. An LBP is required to act of their own accord and not wait for others to remind them of their obligations.

Was there a good reason

- [19] The evidence provided by the Respondent included an issue of outstanding payments from the company to which he was contracted to carry out the roofing work. The Respondent said when he completed the job, he invoiced [OMITTED] but was not paid for the work. He knew the Complainant was demanding the paperwork but was reluctant to hand it over, on advice from his lawyer, for that was the only advantage he thought he had to get paid.

- [20] In an email dated 2 January 2025, the Respondent said:

“It has been a very up and down year and a very difficult year. [OMITTED] never paid the invoice 2313 and the total amount of that is \$12,668.08, and that hurt us leaving us to do the job for free basically.”

“I would like to apologise to you and your family for taking it out on you and wish you the very best in the year to come. So please find attached are all the paperwork (sic) you require to complete the sign off of the roof.”

- [21] The correspondence indicates the ROW for the roofing may have been withheld for payment reasons, which is not a good reason. The Board has repeatedly stated a ROW is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, or by contractual disputes. LBPs should be aware of their obligations to provide them, and their provision should be a matter of routine.

Board’s Decision

- [22] The Respondent **has** failed to provide a ROW on completion of restricted building work.

Penalty, Costs and Publication

- [23] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [24] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [25] The Board has the discretion to impose a range of penalties.ⁱⁱ Exercising that discretion and determining the appropriate penalty requires the Board to balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.⁸ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁹
- (a) protection of the public and consideration of the purposes of the Act;¹⁰
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹¹
 - (c) setting and enforcing a high standard of conduct for the industry;¹²
 - (d) penalising wrongdoing;¹³ and
 - (e) rehabilitation (where appropriate).¹⁴
- [26] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases¹⁵ and applying the least restrictive penalty available for the particular offending.¹⁶ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁷ that is consistent with other penalties imposed by the Board for comparable offending.¹⁸

⁸ Ellis v Auckland Standards Committee 5 [2019] NZHC 1384 at [21]; cited with approval in National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins [2022] NZHC 1709 at [48]

⁹ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁰ Section 3 Building Act

¹¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹² *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

- [27] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.¹⁹
- [28] ROW matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour. However, the Respondent has provided a late ROW. That is a mitigating factor. The penalty will be reduced by \$500 to a fine of \$1000.

Costs

- [29] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other LBPs should not be left to carry the financial burden of an investigation and hearing.²⁰
- [30] The courts have indicated 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²¹. The starting point can then be adjusted up or down, depending on the particular circumstances of each case²².
- [31] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments are then made.
- [32] Based on the above, the Board's costs order is the Respondent is to pay \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

Publication

- [33] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register maintained as part of the LBP scheme as is required by the Act,²³ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [34] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁴ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the

¹⁹ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

²⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²¹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²² *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

profession to know of the findings of a disciplinary hearing, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.²⁵

- [35] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business, Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

- [36] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.

- [37] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel an LBP's licence if fines or costs imposed as a result of disciplinary action are not paid.

Submissions on Draft Decision

- [38] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

- [39] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **Wednesday 9th July 2025**.

- [40] If submissions are received, then the Board will meet and consider those submissions.

²⁵ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

- [41] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.
- [42] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

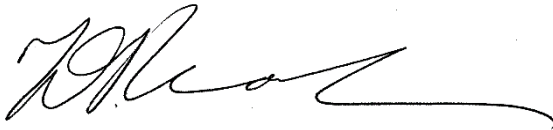
Request for In-Person Hearing

- [43] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.
- [44] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **Wednesday 9th July 2025**
- [45] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

Right of Appeal

- [46] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱⁱ.

Signed and dated this 17th day of June 2025.



Ms Pearson-Green
Presiding Member

This decision and the order herein were made final on 10 July 2025 on the basis that no further submissions were received.

Signed and dated this 14th day of July 2025.



Ms Pearson-Green
Presiding Member

ⁱ Section 318 of the Act

- (1) *In any case to which section 317 applies, the Board may*
 - (a) *do both of the following things:*
 - (i) *cancel the person’s licensing, and direct the Registrar to remove the person’s name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person’s licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person’s licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.”*

ⁱⁱ Section 318 Disciplinary Penalties

- (1) *In any case to which section 317 applies, the Board may—*
 - (a) *do both of the following things:*
 - (i) *cancel the person’s licensing and direct the Registrar to remove the person’s name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person’s licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person’s licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*

- (2) *The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

iii Section 330 Right of appeal

- (2) *A person may appeal to a District Court against any decision of the Board—
(b) to take any action referred to in section 318.*

Section 331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*