

## Before the Building Practitioners Board

	BPB Complaint No. 26748
Licensed Building Practitioner:	Damian Phillip Smith (the Respondent)
Licence Number:	BP 110965
Licence(s) Held:	Carpentry and Site AoP 2

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

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Complaint or Board Inquiry:	Complaint
Hearing Type:	On the Papers
Draft Decision Date:	14 August 2025
Final Decision Date:	17 February 2026

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr G Anderson, LBP, Carpentry and Site AoP 2

#### 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 costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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## Summary of the Board’s Final Decision

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

## 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.<sup>1</sup>
- [3] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were 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 or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2)

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<sup>1</sup> 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.

<sup>2</sup> 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.

with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.

### **Draft Decision Process**

- [4] 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.
- [5] Ordinarily, the Board makes a decision after holding a hearing.<sup>3</sup> The Board may, however, depart from its normal procedures if it considers that doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice.<sup>4</sup>
- [6] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was given the opportunity to comment on the draft findings and present further evidence before the Board made a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.
- [7] On 14 September 2025, the Respondent made a submission. He disputed the Board's findings. The Draft Decision was set aside, and a hearing was scheduled for 4 December 2025.
- [8] On 1 December 2025, the Respondent made a further submission and asked that the Board revert to the original Draft Decision. As a result, the hearing date was vacated, and a Minute was issued noting that a Final Decision would be issued.

### **Evidence**

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. 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.
- [10] The complaint related to the Respondent allegedly withholding compliance documentation. The complaint file included evidence regarding the provision of the Respondent's record of work, which was provided some years after the completion of the related work. On that basis, the Board investigated the provision of that

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<sup>3</sup> Regulation 10 of the Complaints Regulations.

<sup>4</sup> 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

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

record of work to determine whether it complied with the requirements of section 88(1) of the Act.

#### **Failure to Provide a Record of Work**

- [11] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.<sup>6</sup>
- [12] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work<sup>7</sup> unless there is a good reason not to provide it.<sup>8</sup>

#### Did the Respondent carry out or supervise restricted building work

- [13] The Respondent was engaged to carry out and/or supervise building work on an alteration to a residential dwelling under a building consent. His work included work on the primary structure and external moisture management system of a residential dwelling, both of which are types of restricted building work.<sup>9</sup>

#### Was the restricted building work complete

- [14] The Respondent's record of work was dated 2 December 2020, and the Complainant indicated that the Respondent's engagement in the building work ended on or about 3 December 2020 when a final building consent inspection was completed. That was when completion occurred and when a record of work should have been provided to the owner and the Territorial Authority.

#### Has the Respondent provided a record of work

- [15] The Respondent replied to the complaint, stating:

*it was provided (to) the inspector at the final inspection I couldn't tell you the date for sure but definitely then*

- [16] No evidence other than the Respondent's statement was provided to substantiate the claim. The Board obtained a copy of the Territorial Authority file. It contained a copy of a record of work from the Respondent. As noted, it was dated 2 December 2020. The Territorial Authority file also showed that the Respondent attended a final inspection on 3 December 2020. The inspection record stated that records of work for primary structure and external moisture management systems were "required". More importantly, the Territorial Authority file recorded the Respondent's record of work as having been received on 29 August 2024. On the basis of that evidence, the

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<sup>6</sup> Section 88(1) of the Act.

<sup>7</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>8</sup> Section 317(1)(da)(ii) of the Act

<sup>9</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Board finds that 29 August 2024 was the date of its provision and that it was not provided at the final inspection, as claimed by the Respondent.

- [17] Whilst the record of work was eventually provided, the provision was well after completion had occurred, and it was not in accordance with the requirements of section 88(1) of the Act.

#### Was there a good reason

- [18] No good reasons for the late provision of the record work have been provided.

#### **Board's Decision**

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

#### **Penalty, Costs and Publication**

- [20] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

- [21] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.

#### Penalty

- [22] The Board has the discretion to impose a range of penalties.<sup>ii</sup> Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>10</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>11</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>12</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>13</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>14</sup>
- (d) penalising wrongdoing;<sup>15</sup> and

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<sup>10</sup> *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]

<sup>11</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>12</sup> Section 3 Building Act

<sup>13</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>14</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>15</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

(e) rehabilitation (where appropriate).<sup>16</sup>

[23] 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 cases<sup>17</sup> and applying the least restrictive penalty available for the particular offending.<sup>18</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>19</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>20</sup>

[24] 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.<sup>21</sup>

[25] Record of work 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. Because the Respondent did provide a record of work, albeit well after its due date, the Board has decided it will reduce the fine by \$500 to a fine of \$1,000.

[26] The Respondent has previously appeared before the Board on a record of work matter. The conduct in that matter, however, occurred after the conduct in this matter. As such, the Board has not treated this as a second or subsequent disciplinary offence.

### Costs

[27] 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 Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.<sup>22</sup>

[28] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>23</sup>. The starting point can then be adjusted up or down, depending on the particular circumstances of each case<sup>24</sup>.

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<sup>16</sup> *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

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

<sup>18</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>20</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>21</sup> 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.

<sup>22</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>23</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>24</sup> *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.

- [29] 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.
- [30] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$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

- [31] 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 Licensed Building Practitioners' scheme as is required by the Act,<sup>25</sup> 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.
- [32] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>26</sup> Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the 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.<sup>27</sup>
- [33] 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**

- [34] For the reasons set out above, the Board directs that:
- |                     |   |
|---------------------|---|
| <b>Penalty:</b>     | <b>Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,000.</b>  |
| <b>Costs:</b>       | <b>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.</b> |
| <b>Publication:</b> | <b>The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(I)(iii) of the Act.</b>                      |

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<sup>25</sup> Refer sections 298, 299 and 301 of the Act

<sup>26</sup> Section 14 of the Act

<sup>27</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

**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.**

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

**Right of Appeal**

- [36] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>iii</sup>.

Signed and dated this 2<sup>nd</sup> day of March 2026.



**Mr M Orange**  
Presiding Member

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<sup>i</sup> **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."*

<sup>ii</sup> **Section 318 Disciplinary Penalties**

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- (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.*