

Before the Building Practitioners Board

	BPB Complaint No. 26610
Licensed Building Practitioner:	David Lee (the Respondent)
Licence Number:	BP 101144
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 Type:	In Person
Hearing Date:	22 July 2025

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 \$2,000 and ordered to pay costs of \$1,500. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

- [1] The Respondent failed to provide a Record of Work to the owner and/or the Territorial Authority as per the requirements of section 88(1) of the Act on the completion of his restricted building work.
- [2] The Board adopted a starting point of a fine of \$2,500 for the disciplinary offence on the basis that it was the fourth time the Respondent had been disciplined for failing to provide a Record of Work. The fine was reduced to \$2,000 on the basis that a Record of Work had been provided to the main contractor. The Respondent is ordered to pay costs of \$1,500. The disciplinary finding will be recorded on the Public Register for a period of three years. No further publication will be ordered.

The Charges

- [3] 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

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.

- [4] In this matter, the disciplinary charges the Board resolved to further investigate² 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) 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.
- [5] The Board³ initially dealt with the complaint by way of a Draft Decision. The Respondent disputed the findings and requested a hearing. The Draft Decision was set aside, and a hearing was scheduled.

Evidence

- [6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. 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

- [7] 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 (in the matter, the Auckland Council) on completion of their restricted building work.⁵
- [8] 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 work⁶ unless there is a good reason for it not to be provided.⁷

Did the Respondent carry out or supervise restricted building work

- [9] The Respondent was engaged to carry out and/or supervise building work on an alteration to an existing dwelling under a building consent. His work included work on the primary structure (foundations, frames and trusses) and external moisture management system (doors, windows and cladding) of the residential dwelling,⁸ all of which are restricted building work.

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.

³ The Board is a statutory body established under section 341 of the Act.³ Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

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

⁵ Section 88(1) of the Act.

⁶ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁷ Section 317(1)(da)(ii) of the Act

⁸ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Was the restricted building work complete

- [10] The Respondent's restricted building work took place between late 2018 and early 2019. In his evidence at the hearing, the Respondent stated that he did not provide a Record of Work in 2019 because he might have been asked to do more work and because he was not asked to provide one.
- [11] In January 2024, the Auckland Council sent the Respondent an email asking him for his Record of Work. Because of that email, the Respondent was on notice from January 2024 that his Record of Work was required. The Board has taken that date as completion and the date when a Record of Work was due.

Has the Respondent provided a Record of Work

- [12] The Respondent stated, in his response to the complaint, that he had provided a Record of Work in March 2023 to the main contractor. He stated in evidence that he did not keep a copy of that Record of Work. He also stated that he gave the contractor a further Record of Work after he received the Auckland Council email. He accepted that he did not, at any time, provide the Record of Work to the owner (the Complainant) or to the Auckland Council.
- [13] The Complainant gave evidence that he contacted the Respondent and asked him to provide a Record of Work. The Respondent gave evidence that he only deals with the person with whom he contracts, which is why he gave his Record of Work to the main contractor, not the owner. He stated that, in doing so, he misunderstood what his legal obligations were and that he was maintaining his business relationship with his main contractor.
- [14] The legal requirement, as set out in the Act, is that a Licensed Building Practitioner must provide a Record of Work to the owner and to the Territorial Authority. Providing a Record of Work to a main contractor does not satisfy the legal requirement unless the main contractor promptly passes it on to the owner and the Territorial Authority. That did not happen in this matter. The main contractor, if he did get a Record of Work from the Respondent, did not pass it on. Because he did not, and because the Respondent, when asked by the owner for a Record of Work, did not provide one, a complaint was made. To put it another way, had the Respondent provided a Record of Work to the owner rather than the main contractor when he was asked to do so in January 2024, the complaint would not have been made.
- [15] The Respondent should also note that the obligation is to provide a Record of Work on completion of restricted building work. He should not wait to be asked for one or for the project as a whole to be completed. Prompt provision is what the law requires.
- [16] Given the above, the Board has decided that the Respondent did not provide a Record of Work to the owner or the Territorial Authority on completion as per the requirements of section 88(1) of the Act.

Was there a good reason

- [17] In his initial response to the Board, the Respondent noted that there was a payment issue with the work he was contracted to complete and that he left the site and did not return because of it. At the hearing, he stated that payment issues were not linked to the failure to provide a Record of Work to the owner or the Territorial Authority.
- [18] The reason given for the failure to provide was ignorance of the law. That is not a good reason. As a Licensed Building Practitioner, the Respondent should know what his legal obligations are and should be complying with them.

Board's Decision

- [19] The Respondent **has** failed to provide a Record of Work on the 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 Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [21] The Respondent made submissions at the hearing regarding penalty, costs, and publication.

Penalty

- [22] The Board has the discretion to impose a range of penalties.ⁱⁱ 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.⁹ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁰
- (a) protection of the public and consideration of the purposes of the Act;¹¹
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹²
 - (c) setting and enforcing a high standard of conduct for the industry;¹³
 - (d) penalising wrongdoing;¹⁴ and

⁹ *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]

¹⁰ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹¹ Section 3 Building Act

¹² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹³ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁴ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- (e) rehabilitation (where appropriate).¹⁵
- [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 cases¹⁶ and applying the least restrictive penalty available for the particular offending.¹⁷ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁸ that is consistent with other penalties imposed by the Board for comparable offending.¹⁹
- [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.²⁰
- [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.
- [26] This is the fourth time the Board has disciplined the Respondent for failing to provide a Record of Work. The Respondent was disciplined by the Board in September 2020 for (amongst other matters) a failure to provide a Record of Work²¹ and again in August 2022.²² Most recently, he was disciplined in May 2023 for a failure to provide a Record of Work and was fined \$2,000.²³
- [27] The Respondent has not learnt from previous disciplinary findings. He should now know better. The Board does accept, however, that this conduct occurred at or about the same time as other conduct.
- [28] Taking the above factors into consideration, the Board has adopted a starting point of a fine of \$2,500. The provision of a Record of Work to the main contractor will be taken as a mitigating factor. A reduction in the fine of \$500 will be applied for it. The fine is set at \$2,000.
- [29] The Respondent should note that any future offending under section 317(1)(da)(ii) of the Act may result in the suspension or loss of his licence.

Costs

- [30] 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

¹⁵ *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

¹⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

²⁰ 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.

²¹ *David Lee* [2020] BPB 25370

²² *David Lee* [2022] BPB 25968

²³ *David Lee* [2022] BPB 26039

that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.²⁴

- [31] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁵. The starting point can then be adjusted up or down, depending on the particular circumstances of each case²⁶.
- [32] 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.
- [33] A hearing was held at the Respondent's request. The Board's scale amount for an in-person hearing for a simple matter is \$2,100. The Board's Notice of Proceeding stipulated that the matter should have been dealt with using an audiovisual connection. That did not occur, and it is not clear why it did not. The costs for an audiovisual hearing are \$1,500. The Board decided that it would order the lower amount of costs. The Respondent is to pay the sum of \$1,500 toward the costs of and incidental to the Board's inquiry.

Publication

- [34] 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,²⁷ 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.
- [35] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁸ 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.²⁹
- [36] 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.

²⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁵ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁶ *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.

²⁷ Refer sections 298, 299 and 301 of the Act

²⁸ Section 14 of the Act

²⁹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[37] 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 \$2,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,500 (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.

[38] 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

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

Signed and dated this 5th day of August 2025.



Mr M Orange
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:

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- (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.