

Before the Building Practitioners Board

	BPB Complaint No. 26914
Licensed Building Practitioner:	Douglas John Johns (the Respondent)
Licence Number:	BP 106817
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:	On the Papers
Hearing and Draft Decision Date:	4 March 2026
Final Decision Date:	19 June 2026

Board Members Present:

Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
Mr G Pearson, Barrister and Solicitor – Legal Member
Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director
Mr S Hammond, LBP, Carpentry, Regulatory Consultant

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 \$500 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for 3 years.

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Summary of the Board's Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$500 and ordered to pay costs of \$700. The disciplinary finding will be recorded on the public Register for 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.¹
- [3] In this matter, the disciplinary charge the Board resolved to further investigate² was 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

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.

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.

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.³ 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.⁴
- [6] In this instance, the Board decided a formal hearing was unnecessary. The Board considered there was sufficient evidence before it to allow it to make a decision on the papers. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making this final decision. If the Respondent requested an in-person hearing, or the Board directed that one was required, this decision would be set aside, and a hearing would be scheduled.

Evidence

- [7] The Board must be satisfied on the balance of probabilities the alleged disciplinary offences have been committed.⁵ 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

- [8] A Licensed Building Practitioner (LBP) must provide a record of work for any restricted building work they have carried out or supervised, to the Owner and the Territorial Authority (Council) on completion of their restricted building work,⁶ unless there is a good reason not to.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 a master bedroom extension to an existing residential dwelling under a building consent. His work included foundations, framing, roofing, window and door installations, bracing and wall cladding, which is restricted building work because it

³ Regulation 10 of the Complaints Regulations.

⁴ 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

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁶ Section 88(1) of the Act.

⁷ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011.

forms part of the primary structure and/or external moisture management system of a residential dwelling.⁸

Was the restricted building work complete

- [10] The work was undertaken by the Respondent between 2016 and 2017. He was the LBP carpenter on site during that period. The Complainant provided evidence of invoices addressed to the Respondent's company Concpt Ltd, from subcontractors which allegedly related to the work the Respondent completed at the property. The Respondent was listed as attended, with his LBP details on several Auckland Council inspection reports.
- [11] Sometime during 2017, his restricted building work was completed. This was effectively when a record of work from the Respondent was due.
- [12] The TA file obtained on 7 October 2025, as part of the Board's investigation, showed a first final inspection was carried out in July 2019. No record of work had been provided at that time, even though it was by then overdue.

Has the Respondent provided a record of work

- [13] The Complainant contacted the Respondent by email on 8 and 24 August 2025, requesting the record of work, but received no response.
- [14] In evidence to the Board, the Complainant confirmed the Respondent did provide the record of work to him around 21 October 2025. No record of work has been identified in the TA file.
- [15] Auckland Council issued a Code Compliance Certificate on 20 October 2025.
- [16] As part of the Board's Investigation, further requests were made to Auckland Council seeking an update on documents submitted to the building consent file after 7 October 2025. As of 19 January 2026, there was no record of work from the Respondent in the TA file.

Was there a good reason

- [17] On 21 October 2025, the Respondent emailed the investigator in response to the complaint allegations. He stated:

"Hi, ROW has been sent."
- [18] Further information was sought from the Respondent, but no response was received.
- [19] On this basis, the Board concluded there was no good reason for failing to supply the record of work when his restricted building work came to an end in 2017.

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

Further Evidence and Submissions Received

- [20] The Board issued a Draft Decision on 26 April to the Complainant and the Respondent. The Respondent was invited to provide further evidence and/or submit a written submission to the Board's findings by no later than the close of business on 12 May 2026.
- [21] The Respondent emailed the Board on 19 May 2026 essentially asking for more time, to which the Board agreed. A Board minute was issued on 21 May 2026 which set a 29 May 2026 deadline. It noted submissions could be made on the substantive findings and/or penalty, costs and publication. If submissions were received the Board would meet and consider them.
- [22] If no submissions or further evidence was received within the time frame specified, then this Draft Decision would become final.
- [23] The Respondent provided a submission on 28 May 2026. In it, he said:

I feel the fine is extreme considering my only 'crime' was a slower than normal response to the [Complainant's] request for a ROW...

And

The subsequent fine has arrived at a difficult time when we have been struggling for consistent work like many others in the industry.

Conclusion and Reasoning

- [24] The Respondent did fail to provide a record of work when it was due. He has belatedly supplied it to the Complainant after this complaint was lodged and failed to provide it to the Council as required under section 88(1) of the Act.
- [25] The further evidence received and submissions made by the Respondent did not result in any changes being made to the Board's Draft Decision. The Respondent should note a record of work must be supplied when the restricted building work comes to an end. He should not wait to be asked to supply it. It also cannot be withheld because of a dispute, contractual or otherwise, with the Complainant. It should also be noted a \$500 fine is at the lower end of penalties available for failure to provide a record of work.
- [26] The Board notes if payment presents a difficulty, as suggested in the submission, an option is for the Respondent to make the payments over time. The Registrar is directed to engage with the Respondent regarding payment options.

Board's Decision

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

Penalty, Costs and Publication

- [28] Having found that one or more of the grounds in section 317 applied, the Board under section 318 of the Act,ⁱ considered the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [29] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. The Board made indicative orders and gave the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [30] The Board has the discretion to impose a range of penalties.ⁱⁱ Exercising that discretion and determining the appropriate penalty required the Board to 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
 - (e) rehabilitation (where appropriate).¹⁵
- [31] 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

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

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

- [32] 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
- [33] 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.
- [34] However, the Board noted the Respondent's failure to provide a record of work dated back to 2017. That was within the first 5 years of the mandated LBP scheme coming into force and just outside the period when the Board was taking an educational and more lenient approach to the failure to provide a record of work. On that basis and proportionate to the fines applied at the time, the penalty was reduced to \$500.

Costs

- [35] 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.²¹
- [36] The courts have indicated 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.²² The starting point can then be adjusted up or down, depending on the particular circumstances of each case.²³
- [37] The Board adopted an approach to costs that used a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments were then made.
- [38] Based on the above, the Board's costs order was the Respondent was 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 the actual costs.

Publication

- [39] As a consequence of its decision, the Respondent's name and the disciplinary outcomes would be recorded in the Public Register maintained as part of the LBP scheme as is required by the Act,²⁴ and he would be named in this final decision,

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

²² *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²³ *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.

²⁴ Refer sections 298, 299 and 301 of the Act

which would be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.

- [40] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁵ 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.²⁶
- [41] Based on the above, the Board would 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

- [42] 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 \$500.

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(1)(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.

- [43] The Respondent should note 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.

²⁵ Section 14 of the Act

²⁶ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Right of Appeal

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

Signed and dated this 13th day of July 2026.



Mrs F 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.