

Before the Building Practitioners Board

	BPB Complaint No. 26605
Licensed Building Practitioner:	Gaganjeet Singh Dhillon (the Respondent)
Licence Number:	BP 134835
Licence(s) Held:	Carpentry and Roofing – Shingle or Slate Roof

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 proceeding as a Board Inquiry
Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	28 August 2025
Decision Date:	4 September 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
Ms E Harvey McDouall, Registered Architect

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 disciplinary offences under sections 317(1)(b), (d), (da)(ii) and (g) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(h) of the Act.

The Respondent is ordered to undertake training and to pay costs of \$2,950. 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 supervised building work. The Board found that he had committed disciplinary offences under sections 317(1)(b), (d), (da)(ii) and (g) of the Act in relation to it and his supervision. The Respondent was ordered to undertake and successfully complete a Level 4 New Zealand Certificate in Construction Related Trades (Supervisor) and to pay costs of \$2,950. A record of the disciplinary offending 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.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], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act;
 - (c) 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;
 - (d) breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, IN THAT, as the employer, he may, in relation to the issues noted in the Architects site inspection report numbers 4 and 8 (starting at page 57 of the Board's files) failed to ensure that building work he carried out or supervised was carried out or supervised in accordance with the Health and Safety at Work Act 2015 contrary to Clause 10(2)(g) of the Code of Ethics: You must comply with the law; and
 - (e) breached section 314B of the Act contrary to section 317(1)(h) of the Act, IN THAT, he may have carried out or supervised the construction of a concrete tile roof which he may not have been competent to carry out or supervise;

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.

- [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 following items as noted in a [OMITTED] report dated 15 February 2024 (starting at page 74 of the Board's file) and the Project Architect's site inspection report Numbers 1, 4 and 8 (starting at page 40 of the Board's file):
 - I. foundation and ground concrete floor slab;
 - II. mid-floor tray deck suspended concrete slab
 - III. wall framing, structural members/ beams
 - IV. roof framing and trusses, purlin bracing fixings and roof underlay;
 - V. roofing installation, metal roofing to units and concrete tile to the altered areas of the existing unit;
 - VI. the installation of Gib Weatherline, cavity battens, damp proof course, wall wrap, metal wall cladding, and/or fire doors; and/or
 - (b) whether a building consent amendment or minor variation was sought and/or approved before the associated building work was carried out as referenced in paragraph 3.1.3 of the [OMITTED] report (page 88 of the Board's file).

Procedure

- [5] Prior to the hearing, the Complainant withdrew the complaint. The Complainant stated that it was withdrawn at the Respondent's request as part of a settlement agreement negotiated through Master Builders with [OMITTED] (trading as [OMITTED]), the main contractor. The Complainant stated that [OMITTED] had not complied with the settlement.
- [6] Because of the withdrawal, the matter proceeded as a Board Inquiry.
- [7] A number of summoned witnesses did not appear and give evidence. The Board had asked the Respondent to assist in summoning those persons to ensure they received their summonses. The Respondent replied that he did not know [OMITTED] or [OMITTED] and that he had not worked with them. During the hearing, it became apparent that [OMITTED] was his brother and that he had supervised both persons.
- [8] At the hearing, the Respondent was asked whether he wanted it adjourned to a time when the witnesses could be present. He stated he did. Because the Respondent had not cooperated as requested, and because the Board had strong evidence before it and the matter had been previously adjourned, a further adjournment was not granted.

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences 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.
- [10] [OMITTED] (trading as [OMITTED]) were contracted to undertake a building project involving multiple units. The Respondent described himself as the supervisor, and the building contract noted he was the person carrying out the work, with [OMITTED] supervising. [OMITTED] is not a Licensed Building Practitioner (LBP) and cannot lawfully supervise restricted building work. The Respondent stated that [OMITTED] was in charge and would make the decisions.
- [11] [OMITTED] provided unlicensed staff to assist with the build, including [OMITTED], the company's sole Director and the main shareholder. The Respondent was also a Director and a minor shareholder of [OMITTED] when the building work was undertaken. He described himself as a non-active Director who had no involvement in the running of the company. Notwithstanding the Respondent's shareholding in the company, he stated that he did not know how to contact [OMITTED], who had been summoned to the hearing and who failed to appear.
- [12] The Respondent's involvement in the building work included the floor slabs and the installation of framing, trusses, cavity battens and gib weatherline. He did not install the concrete tile roof that was under investigation.
- [13] The Complainant considered that the Respondent was running the site, although he also referred to dealing with [OMITTED].
- [14] Disputes arose during the build with the main contractor ([OMITTED]), and the Complainant, starting in or about August or September 2024, used other contractors to complete the build. [OMITTED] was aware that other contractors had taken over. He provided his record of work for that which he had carried out and supervised to [OMITTED] and [OMITTED]. Nonetheless, he maintained that his building work was not complete and that he, therefore, did not have an obligation to provide a record of work.
- [15] The Architect for the build issued multiple observation reports during the build, which raised quality and compliance issues. The Architect gave evidence at the hearing and noted that significant remedial work was required. Not all of the issues raised by the Architect occurred when the respondent was involved in the build. With respect to those that did relate to the Respondent's building work or supervision, he accepted that there were issues and that he had made mistakes, but maintained he should have been allowed to fix them. He also submitted that the

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

building work had been passed by the Building Consent Authority (BCA), implying that the work was, therefore, compliant.

- [16] The issues raised by the Architect included alleged health and safety breaches and failures to correctly process building consent changes.
- [17] The Complainant also obtained a report from [OMITTED] as part of the Master Build Services Limited settlement process. The report also raised numerous quality and compliance issues, some of which related to the building work that the respondent had carried out or supervised. Again, the Respondent's position was that whilst mistakes had been made, he should have been allowed to rectify them.
- [18] Because the Respondent did not contest the findings in the Architect's observations or the [OMITTED] reports, which formed the basis of the Board's investigation issues as set out in the Notice of Proceeding, the Board did not review them individually. Rather, it provided the Respondent with an opportunity to explain how the issues came about, which he was not able to do.
- [19] The Board did, however, note the following:
 - (a) Foundation and ground concrete floor slab:
 - ground floor concrete slabs not installed as per plans, missing fire door joinery rebates; and
 - concrete slab has blowouts at the edges, causing follow-on issues with framing, Gib Weatherline installation, cavity clearances, and the need for remedial work.
 - (b) Mid-floor tray deck suspended concrete slab:
 - mid floor concrete floors and balconies not installed as per plans;
 - balcony minimum falls not achieved; and
 - concrete floor bulging at edges, causing follow-on issues with framing, Gib Weatherline installation and cladding.
 - (c) Wall framing, structural members and beams:
 - wall framing installed out of tolerance;
 - framing not as per building consent room dimensions;
 - incorrect fire door opening sizes;
 - bottom plates installed not overhanging the concrete slab by 6mm as per consent details and not installed linear to the concrete floor slabs; and
 - bottom plate variance from sitting inside the slab edge to overhanging 27mm
 - Framing installed over pipework in concrete floors
 - Structural load paths inconsistent or not as per consent
 - (d) Roof framing and trusses, purlin bracing fixings and roof underlay:
 - missing roof strap bracing under the installed roof;
 - missing structural fixings or not as per consent;
 - trusses not installed level, causing follow-on issues with ceiling battens; and

- purlin fixing not installed correctly, causing visible damage to the long-run tray roofing installed over.
- (e) Roofing installation, metal roofing to units (and concrete tile to the altered areas of the existing unit carried out by others):
 - long run roof sheets installed over protruding purlin fixings, causing damage.
- (f) Installation of Gib Weatherline, cavity battens, damp proof course, wall wrap, metal wall cladding, and/or fire doors:
 - cavity battens installation not as per consent;
 - minimum cavity space, for brick veneer and cavity batten, not achieved due to inconsistencies in wall framing and concrete floor slabs set out and bulging;
 - Gib Weatherline not installed as per consent and manufacturer's specifications; and
 - double layering for fire protection of steel structural members, not as per the building consent.
- (g) Health & Safety:
 - non-compliant scaffolding, including clear access widths, some with single planks and/or missing edge protection and/or non-compliant gaps;
 - workers not wearing appropriate safety equipment;
 - signage board not filled in; and
 - Untidy site.

[20] The Board was also investigating whether a building consent amendment or minor variation was sought and/or approved before the associated building work was carried out with reference to 3.1.3 of the [OMITTED] report. The Board accepted that the Respondent was not responsible for the issues, so it was not further investigated.

Negligence or Incompetence

[21] 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

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”

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.

Has the Respondent departed from an acceptable standard of conduct

- [22] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code⁹ and any building consent issued.¹⁰ The test is an objective one.¹¹
- [23] There was substantial evidence that the building work did not meet acceptable standards. The Board's view was that the Respondent, as the supervisor of non-licensed persons, had failed in his supervision duties and had conducted himself in a negligent manner.
- [24] The Board noted that the Respondent's position was that, because the BCA had passed the building work, it was compliant. That was not accepted. Not all of the work was passed by the BCA, and many of the compliance issues were not identified until the issues with the foundations and framing became apparent in later building work. Also, the BCA does not necessarily check everything, and a BCA does, from time to time, miss non-compliance issues.
- [25] The Board preferred the evidence of the Architect who had carried out a thorough and in-depth review and whose findings the Respondent did not dispute. In this respect, though, the Respondent took the position that he should have been provided with an opportunity to rectify those issues. Contractually, that may have been the case. From a competency perspective, however, a question that arises is whether those issues should have arisen in the first instance and, if they did, whether the Respondent, as the supervisor, should have identified and dealt with them.
- [26] The Board's view is that Licensed Building Practitioners should be aiming to get building work right the first time and not to rely on others to identify compliance failings and to assist them to get it right. In this respect, during the first reading of changes to the Act around licensing it was noted by the responsible Minister:

In February this year the Minister announced measures to streamline and simplify the licensed building practitioner scheme. A robust licensing scheme

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 Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

- [27] The introduction of the licensing regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation:

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.

- [28] Section 3 of the Act, which sets out the Act's purposes, notes that the Act includes the purpose of promoting the accountability of builders. Section 14E of the Act encapsulates the statements in Hansard noted above. It sets out that:

14E Responsibilities of builder

- (1) *In subsection (2), builder means any person who carries out building work, whether in trade or not.*
- (2) *A builder is responsible for—*
 - (a) *ensuring that the building work complies with the building consent and the plans and specifications to which the building consent relates;*
 - (b) *ensuring that building work not covered by a building consent complies with the building code.*
- (3) *A licensed building practitioner who carries out or supervises restricted building work is responsible for—*
 - (a) *ensuring that the restricted building work is carried out or supervised in accordance with the requirements of this Act; and*
 - (b) *ensuring that he or she is licensed in a class for carrying out or supervising that restricted building work.*

[29] It is within this context that the Board considers that the acceptable standards expected of a reasonable Licensed Building Practitioner include taking steps to ensure building work is carried out competently and compliantly as and when it is carried out.

[30] As noted, the Respondent was the supervisor of unlicensed persons. Supervise is defined in section 7¹² of the Act. The definition states:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

[31] When considering the required levels of supervision, there are a number of factors that need to be taken into account, including:

(a) the type and complexity of the building work to be supervised;

(b) the experience of the person being supervised;

(c) the supervisor's experience in working with the person being supervised and their confidence in their abilities;

(d) the number of persons or projects being supervised; and

(e) the geographic spread of the work being supervised.

[32] The Board also needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.

[33] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992.¹³ The definition of supervision in that Act is consistent with the definition in the Building Act, and as such, the comments of the court are instructive. In the case, Judge Tompkins stated at paragraph 24:

“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge

¹² Section 7:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

¹³ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”

- [34] It was clear to the Board that the Respondent did not provide adequate supervision and that it was more than likely that he was either allowing his employer, [OMITTED], to direct and control the building work, including the restricted building work, or that he was simply failing to review and assess work that had been completed.
- [35] Given the above factors, the Board, which includes persons with extensive experience and expertise in the building industry, considered that the Respondent has departed from what the Board considers to be an accepted standard of conduct and that he has been negligent.

Was the conduct serious enough

- [36] The conduct was serious. The instances of non-compliance were not isolated, and they continued over a period of time.
- [37] Whilst it may have been that the Respondent was following his employer’s directions, as a Licensed Building Practitioner, his duty is to ensure the building work complies with the Building Consent and Building Code, which it did not. As such, it is not an excuse that someone else was in charge of the site, and it does not reduce the seriousness of the conduct.

Has the Respondent been negligent or incompetent

- [38] The Respondent has supervised building work in a negligent manner.

Contrary to a Building Consent

- [39] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁴ Once issued, the building work must be carried out in accordance with the building consent.¹⁵ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁶ Inspections ensure independent verification that the building consent is being complied with.
- [40] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that the departure was deliberate or a result of negligent conduct.¹⁷ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the

¹⁴ Section 49 of the Act

¹⁵ Section 40 of the Act

¹⁶ Section 222 of the Act

¹⁷ *Blewman v Wilkinson* [1979] 2 NZLR 208

Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁸ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent

- [41] The items listed in paragraph [19] above are all instances of building work that did not comply with the building consent. As such, it follows that the Respondent has supervised building work that was contrary to the building consent issued.

Was the conduct serious enough

- [42] As with the findings in relation to negligence, because the instances of non-compliance were not isolated and they continued over a period of time, the conduct was serious.

Has the Respondent breached section 317(1)(d) of the Act

- [43] The Respondent has supervised building work that did not comply with the building consent.

Failure to Provide a Record of Work

- [44] 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.¹⁹
- [45] 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 work²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise restricted building work

- [46] The Respondent carried out and supervised building work on a new residential dwelling under a building consent. His work included building work on the foundations, frames, trusses, cavity battens and gib weatherline, all of which are restricted building work because they form part of the primary structure and weathertightness of a residential dwelling.²²

Was the restricted building work complete

- [47] The Respondent's restricted building work came to an end in or about August 2024 when the [OMITTED] contract came to an end. The Board was satisfied that the

¹⁸ *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".

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Respondent knew the contract had ended and that he would not be returning to carry out any further restricted building work. As such, August 2024 was when his record of work was due.

- [48] The Board did not accept the Respondent's submission that his work was not complete and that his obligation to provide a record of work had not, therefore, arisen. It was clear to the Board, and it should have been clear to the Respondent, that he would not be able to return and carry out any further building work once the [OMITTED] contract had been terminated.

Has the Respondent provided a record of work

- [49] The Respondent stated that he had provided a record of work to [OMITTED], but provided no evidence to support his claim. Regardless of that claim, even if he had provided it to [OMITTED], a company that he was a shareholder and Director of, it would not have satisfied the provisions of section 88(1) of the Act, which requires that the record of work be provided to the owner and the Territorial Authority.

Was there a good reason for the Respondent to withhold his records of work

- [50] There were no good reasons for the failure to provide a record of work.

Did the Respondent fail to provide a record of work

- [51] The Respondent has failed to provide a record of work on completion of restricted building work as per the requirements of section 88 of the Act.

Code of Ethics

- [52] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.²³ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes²⁴ for some time, and the Board has taken guidance from decisions made in other regimes.
- [53] The disciplinary provision in the Act simply states, "has breached the code of ethics". Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board*,²⁵ Chief Justice Eichelbaum stated the purposes of disciplinary processes, are to:

Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession

²³ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

²⁴ Lawyers, Engineers, Architects and Accountants, for example

²⁵ [1992] 1 NZLR 720 at 724

itself, against persons unfit to practice; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

- [54] The Board also notes that the courts have applied the same threshold test to Code of Ethics matters that applies to negligence.

The Conduct Under Investigation

- [55] The issues under investigation related to failures to adhere to accepted health and safety principles. Clause 10(2)(f) of the Code states that an LBP must ensure that the building work complies with the Health and Safety at Work Act 2015. The Architect's report contained numerous instances of health and safety risks that had not been mitigated or eliminated. There was no evidence of a Site Specific Safety Plan, and the on-site hazard board had not been filled out with specific details. It was clear that the respondent was paying lip service only to health and safety. It was clear that the respondent was paying lip service only to health and safety.

Was the Conduct Serious Enough

- [56] The building industry has one of the highest rates of health and safety work events. The manner in which the site was run, from a health and safety perspective, would have exacerbated those risks. It was clear that little care and attention were paid to specific health and safety risks and that the respondent was in dereliction of his duties. Given those factors, the Board finds that the conduct was serious.

Has the Respondent Breached the Code of Ethics

- [57] Based on the evidence in the Architect's reports, which the Respondent did not contest, the Board finds that the Respondent has breached clause 10(2)(f) of the Code of Ethics.

Misrepresentation or Outside of Competence

- [58] There are two types of disciplinary offence under s 314B. The first relates to representations as to competence (314(a)). The second relates to carrying out or supervising building work outside of a licensed person's competence (s 314(b)), which was what the Board was investigating.
- [59] The Board's investigations centred on whether the Respondent had carried out or supervised the installation of a concrete tile roof, which he was not competent to do. The Board was satisfied that there was no evidence to establish on the balance of probabilities that he had. Therefore, the Board did not pursue its investigations any further.

Board Decisions

- [60] The Respondent **has** breached sections 317(1)(b), (d), (da)(ii) and (g) of the Act.
- [61] The Respondent **has not** breached section 317(1)(h) of the Act.

Penalty, Costs and Publication

- [62] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [63] The Board heard evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [64] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ 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.²⁶ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁷
- (a) protection of the public and consideration of the purposes of the Act;²⁸
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁹
 - (c) setting and enforcing a high standard of conduct for the industry;³⁰
 - (d) penalising wrongdoing;³¹ and
 - (e) rehabilitation (where appropriate).³²
- [65] 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 cases³³ and applying the least restrictive penalty available for the particular offending.³⁴ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³⁵ that is consistent with other penalties imposed by the Board for comparable offending.³⁶

²⁶ *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]

²⁷ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁸ Section 3 Building Act

²⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁰ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³² *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

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁴ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

- [66] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.³⁷
- [67] In this matter, the Board adopted a starting point of a training order as it would address the Respondent's supervision failings. Accordingly, the Board decided that it would order the Respondent to successfully complete the Level 4 New Zealand Certificate in Construction Related Trades (Supervisor). The Respondent will have two years within which to complete the training, which will be undertaken at his own cost.
- [68] Because the Board has imposed a training order, it cannot, under section 318(2) of the Act, impose any additional penalties, such as a fine.
- [69] The Respondent should note that if he fails to successfully complete the training specified in this order, then the Board will, pursuant to s 318(1)(b) of the Act, suspend the Respondent's licence until such time as the training has been completed.

Costs

- [70] 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.³⁸
- [71] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁹. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case⁴⁰.
- [72] 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 moderately complex. Adjustments are then made.
- [73] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,950 toward the costs of and incidental to the Board's inquiry. That is the Board's scale amount for a half-day moderately complex matter. It is significantly less than 50% of actual costs.

³⁷ 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.

³⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

⁴⁰ *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.

Publication

- [74] 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,⁴¹ 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.
- [75] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.⁴² 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.⁴³
- [76] Based on the above, a summary of the decision will be published in the WrapUp. The Respondent will be named in that publication. The publication, which is to be carried out by the Registrar, is to focus on the importance of supervision.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(e) of the Building Act 2004, the Respondent is ordered to successfully complete the following training within two years of the date of this order: Level 4 New Zealand Certificate in Construction Related Trades (Supervisor) and if the Respondent fails to successfully complete the training then, pursuant to section 318(1)(b) of the Act, his licence will be suspended until the training is completed.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,950 (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, and the Registrar is to carry out further publication in accordance with paragraph [76] of this decision.

- [78] 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.

⁴¹ Refer sections 298, 299 and 301 of the Act

⁴² Section 14 of the Act

⁴³ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [79] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Thursday, 30 October 2025**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

- [80] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 8th day of October 2025



Mr M Orange
Presiding Member

ⁱ **Section 3 of the Act**

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

ⁱⁱ **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."*

iii 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.*

iv 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.*