

## Before the Building Practitioners Board

	BPB Complaint No. 26464
Licensed Building Practitioner:	Jesse Woolhouse (the Respondent)
Licence Number:	BP 127413
Licence(s) Held:	Roofing – Metal Tile, Profiled Metal Roof and or Wall Cladding

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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	Board Inquiry
Hearing Location	Wellington
Hearing Type:	In Person
Hearing Date:	12 December 2024
Decision Date:	4 August 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  
Mr C Lang, Building Surveyor and Quantity Surveyor

#### Appearances:

E Hughes and H Lombard for the Respondent  
J Sylvester for the-Homeowner

#### 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) and 317(1)(d) of the Act.

The Respondent is fined \$2,000 and ordered to pay costs of \$2,425. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

**Contents**

**Summary**..... 2

**The Charges** ..... 2

**Consolidation**..... 3

**Evidence**..... 3

**Negligence or Incompetence** ..... 7

    Has the Respondent departed from an acceptable standard of conduct ..... 8

    Was the conduct serious enough ..... 8

    Has the Respondent been negligent or incompetent..... 9

**Contrary to a Building Consent**..... 9

**Board Decisions** ..... 10

**Penalty, Costs and Publication**..... 10

    Penalty ..... 10

    Costs..... 11

    Publication ..... 12

**Section 318 Order**..... 13

**Submissions on Penalty, Costs and Publication** ..... 13

**Right of Appeal**..... 13

**Summary**

- [1] The Respondent carried out building work in a negligent manner and in a manner that was contrary to the building consent issued. He is fined \$2,000 and ordered to pay costs of \$2,425. A record of the disciplinary offending will be recorded on the public Register for a period of three years.
- [2] The Presiding Member apologises for the delay in making and releasing this decision.

**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.<sup>1</sup>
- [4] 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:

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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.

- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act; and
  - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act.
- [5] 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 the following:
- (a) cladding issues noted by [OMITTED], [OMITTED] in a Defects Register dated 31 March 2023 (starting at page 102 of the Board's file); and
  - (b) an alleged failure to obtain a pre-clad inspection.
- [6] The Board's investigations were limited to the Respondent's building work on the profiled metal cladding.

### **Consolidation**

- [7] The Board may, under Regulation 13, consolidate two or more complaints into one hearing, but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [8] The Board sought agreement for the consolidation of this matter with complaint number CB26351. The consent of all those involved was forthcoming. The two matters were consolidated.

### **Evidence**

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</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] During the course of the Respondent's involvement in the building work, the Homeowner's Architect, [OMITTED], [OMITTED], carried out a review of the building work and provided a Defects Register report based on his observations (the Defects Register). Those observations formed the basis of the Board's investigations.
- [11] The Defects Register noted 23 defects, only some of which related to the Respondent's building work, which was limited to carrying out and supervising profiled metal cladding. Specifically, defects 6, 8, 13, 14, 15, 16, 17, 18 and 23 related to the Respondent's work. Those defects, and Mr Woolhouse's response to them, are set out in the table below.
- [12] A general submission was made that the Respondent's cladding work was compromised by the manner in which the building work that Mr [OMITTED], the respondent in the related matter, had carried out and supervised. In particular, it was submitted that Mr [OMITTED] had installed eco-ply, which set out the lines of

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

the base cladding and the cladding finishing lines and had installed the cavity closure to the areas to be clad in James Hardie Stria wall cladding, which set the height for the bottom of the cladding.

[13] The Board made a disciplinary finding with respect to Mr [OMITTED] that he had incorrectly set out finishing lines for cladding. The Board accepts that Mr [OMITTED] work impacted the Respondent’s work. However, a question for the Board is whether the Respondent should have identified Mr [OMITTED] errors and non-compliance with the approved building consent before he proceeded with his work or taken steps with regard to them.

[14] Counsel also submitted that the Respondent’s evidence showed that he was aware of and consulted the approved building consent when carrying out the building work. During the course of the hearing, the Respondent stated that, for some details raised within the defects report, he had relied on his experience rather than referring to the dimensioned details within the Building Consent Documentation.

[15] The defects under investigation were:

No	Defect (as noted in the defects report)	Response	Board’s Findings
6	<p><i>Base of Cladding Cover – Profile Metal &amp; Stria Board:</i></p> <p><i>Profile metal and Stria Board wall cladding overhang the concrete block wall by approximately 43mm (measurement taken from U/S of flashing.</i></p> <p><i>To comply with E2/AS1 the wall cladding must overhang a minimum of 50mm below the bearer plate/top of masonry wall.</i></p> <p><i>The Building Consented Architects Drawings have all first floor claddings drawn to have common overlap of approximately 100mm.</i></p> <p><i>The U/S of the cladding installed is likely to have an overhang of approx 35mm and as such does not comply with E2/AS1 Fig 93 nor Building Consent Documents.</i></p>	<p>The Respondent measured from Mr [OMITTED] lines. If they had been correct, the work would have been compliant. He also submitted that he followed Mr [OMITTED] instructions when installing the cavity closure.</p> <p>The Respondent stated he was aware of the minimum depth requirement.</p> <p>Counsel also submitted that the Respondent’s evidence showed that he was aware of and consulted the approved building consent when carrying out the building work.</p>	<p>Flashings act as a line of defence for the weathertightness of the building envelope.</p> <p>The Respondent’s application of the metal wall cladding did not comply with the building consent or the minimum Building Code requirements under E2/AS1.</p> <p>Mr [OMITTED] work impacted the building work.</p> <p>The Board did not accept that the Respondent had consulted the building consent. He made assumptions and relied on Mr [OMITTED] finishing lines. He should have checked them and taken steps to address the shortcomings in Mr [OMITTED] work.</p>
8	<p><i>Cavity Battens – Profile Metal Cladding:</i></p> <p><i>Timber castilated cavity battens with DPC isolation strips have been used rather</i></p>	<p>The Respondent submitted that he made a proactive decision to apply a protective coat of supercoarse 2000 to provide</p>	<p>The building work departed from what had been consented. The Respondent stated that he was unaware that there had been a</p>

No	Defect (as noted in the defects report)	Response	Board's Findings
	<p><i>than the Cavibatt plastic cavity battens specified in Architects Building Consent Drawings.</i></p> <p><i>This substitution does comply with E2/AS1 as a product substitution however does not comply with the Architects Building Consent Documents.</i></p>	<p>an isolation barrier over the cavity batten.</p> <p>Counsel submitted that the decision demonstrated a proactive tradesman with a high level of knowledge of his industry.</p>	<p>product substitution from Cavibatt plastic cavity battens to treated timber castellated cavity battens. Whilst the course of action taken may have been reasonable, the correct process to change the building consent was not followed because a minor variation was not applied for or granted. An LBP cannot make unilateral decisions that impact the building consent.</p>
13	<p><i>Cavity Closure – Missing on Deck Skirt Flashing</i></p> <p><i>The cavity closure to the deck skirt flashing has not been installed.</i></p> <p><i>This installation does not comply with E2/AS1 nor Architects Building Consent Documents.</i></p>	<p>The Respondent could not recall if he was responsible for installing the cavity closure to the deck skirt flashing. He confirmed that the cavity closures were provided on site, and in his experience, it can be site-dependent in who is responsible for this work.</p>	<p>The Board noted that the Respondent, at the hearing, stated he was pressured for time and may have missed it.</p> <p>The Board decided there was insufficient evidence to determine whether the Respondent was responsible for the failure to install the cavity closer.</p>
14	<p><i>Flashing upstand on Deck Skirt Flashing:</i></p> <p><i>Flashing upstand to deck skirt flashing has been detailed in Architects Building Consent Drawings to be 75mm.</i></p> <p><i>Actual upstand built is 30mm.</i></p> <p><i>E2/AS1 requires a minimum of 60mm upstand for Extra High Wind Zone which is applicable to this site.</i></p> <p><i>This does not comply with E2/AS1 nor Architects Building Consent Documents.</i></p> <p><i>We recommend all Window Head Flashings should also be checked for the similar upstand height defect.</i></p>	<p>The Respondent could not meet the requirements of the building consent because the cavity batten was in place, and because of Mr [OMITTED] error, he was forced to adapt and depart from the consent. It was submitted that he acted reasonably when fitting the flashing upstand to deck skirt flashing to the best of his ability.</p> <p>The Respondent stated that he was working off his experience default of 50mm and was unaware of any specific wind zone requirement for the site.</p>	<p>Flashings act as a line of defence for the weathertightness of the building envelope.</p> <p>The Respondent could have and should have asked for the batten to be removed so that he could perform the work in a compliant manner.</p> <p>The Board did accept that the issue was limited to one area.</p>
15	<p><i>Cavity Closure missing from window head flashing:</i></p>	<p>It was submitted that it was a one-off error in one place and did not demonstrate</p>	<p>The Board accepted that it was a limited incident. It did, however, demonstrate a lack</p>

No	Defect (as noted in the defects report)	Response	Board's Findings
	<p><i>Cavity Closure above eastern first floor window is missing.</i></p> <p><i>This does not comply with E2/AS1 nor Architects Building Consent Documents.</i></p>	<p>that the Respondent had been negligent.</p>	<p>of coordination between those on site and general oversight of the work.</p> <p>The Board considers that the limited nature of the departure has to be considered with the Board's other findings to determine whether, cumulatively, the conduct meets the tests for negligence.</p>
16	<p><i>Cladding Gap to Head Flashing:</i></p> <p><i>Cladding gap to head flashing of windows exceeds 5mm Gap.</i></p> <p><i>This installation does not comply with E2/AS1 nor Architects Building Consent Documents.</i></p>	<p>The Respondent acknowledged his mistake, which was due to using the double thickness of his ruler. It was submitted that it was a moment of carelessness.</p> <p>The Respondent stated that this situation would have occurred on 'all' head flashing within the metal cladding.</p>	<p>The Board considered it was an example of the Respondent working on the basis of his assumptions rather than what had been consented.</p>
17	<p><i>Window Jamb Detail Foam Closure Missing:</i></p> <p><i>Continuous compressible foam seal is missing from window jamb, corner flashings.</i></p> <p><i>This installation does not comply with E2/AS1 nor Architects Building Consent Documents</i></p>	<p>The Respondent stated it was a mistake and that he forgot this detail due to his high workload. He confirmed he did not check the consents as to this detail.</p> <p>It was submitted that it was an inadvertent error and a moment of carelessness.</p>	<p>The compressible foam seal acts as a line of defence for the weathertightness of the building envelope.</p> <p>The Board considers that the accepted conduct has to be considered with the Board's other findings to determine whether, cumulatively, the conduct meets the tests for negligence.</p>
18	<p><i>Window Jamb Detail insufficient flashing back cover:</i></p> <p><i>The jamb flashing between door and window does not have sufficient back cover – approx 20m. Architects Building Consent documents require 150mm back flashing.</i></p> <p><i>This installation does not comply with E2/AS1 nor Architects Building Consent Documents.</i></p>	<p>The Respondent submitted that it was a particularly difficult junction to achieve weather tightness and client satisfaction. He confirmed that there was 20 mm cover rather than 150 mm cover because of the window placement, but submitted it was due to changes made by Mr [OMITTED] at the request of the homeowner, who did not wish to see a join in the vertical flashing.</p>	<p>Back flashing acts as a line of defence for the weathertightness of the building envelope.</p> <p>The building work was not compliant but was impacted by Mr [OMITTED] work.</p> <p>The area of non-compliance increased with the reduced window size.</p> <p>The Respondent should have taken steps to ensure compliance was achieved,</p>

No	Defect (as noted in the defects report)	Response	Board's Findings
			which could have included consulting the designer.
23	<p><i>Head Flashing – Silicone Seal</i></p> <p><i>MS Silicone sealant to head flashing does not appear to have been installed. This is required as the site is within an Extra High Wind Zone.</i></p> <p><i>This installation does not comply with E2/AS1 nor Architects Building Consent Documents.</i></p> <p><i>We recommend jamb flashing be checked for installation of in-seal tape via further destructive investigation.</i></p>	<p>The Respondent was not aware of the requirement and confirmed he had not checked the building consent. Rather, he relied on his experience in the roofing industry. It was submitted that the conduct was not serious enough.</p>	<p>The sealing of the head flashing acts as a line of defence for the weathertightness of the building envelope.</p> <p>The Board considers that the accepted conduct has to be considered with the Board's other findings to determine whether, cumulatively, the conduct meets the tests for negligence.</p>

- [16] The Respondent stated he was on site 70-80% of the time and that he was supervising his staff. He had a high workload at the time. He used his knowledge and experience to carry out the work. He had his apprentice and sub-contractor, who was an experienced roofer, working with him on-site. He had completed approximately three metal wall cladding projects before this project.
- [17] Regarding the failure to call for a pre-clad inspection, Mr [OMITTED] gave evidence that it had been waived. There was no evidence to support that statement. The BCA records established that it had not been called for.

### Negligence or Incompetence

- [18] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>4</sup> 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*<sup>5</sup> test of negligence.<sup>6</sup> 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.<sup>7</sup> A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if

<sup>4</sup> *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.

<sup>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>6</sup> 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)

<sup>7</sup> 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 conduct fell seriously short of expected standards.<sup>8</sup> If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

- [19] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act<sup>i</sup> as well as the requirement that all building work must comply with the Building Code<sup>9</sup> and any building consent issued.<sup>10</sup> The test is an objective one.<sup>11</sup>
- [20] The Respondent's conduct has departed from an acceptable standard. There were multiple instances of building work that were not compliant.
- [21] The question for the Board is whether, cumulatively, the Respondent's conduct was serious enough to warrant disciplinary action.

Was the conduct serious enough

- [22] With regard to seriousness, Counsel submitted:

39. *Counsel submits that if the Board takes a wide view of Mr Woolhouse's actions they do not reach the high threshold required for negligence or incompetence. Counsel submits these errors were small, Mr Woolhouse took full responsibility for his mistakes and remedied them immediately. Counsel submits that these were not serious mistakes and were easily resolved. Counsel submits that the mistakes made by Mr Woolhouse were not serious enough to warrant a negligent or incompetent finding.*

And

41. *As heard from Mr Woolhouse, a number of the defects in this submission, were clearly a result of the preceding carpentry work completed from Mr [OMITTED] which then forced Mr Woolhouse to make mistakes in his work. Counsel submits Mr Woolhouse has demonstrated behaviour that is regarded as competent and the expected care of a responsible practitioner when faced with Mr [OMITTED] errors. Counsel submits that as a result of Mr [OMITTED] errors, Mr Woolhouse cannot be regarded as negligent or incompetent.*

42. *Overall, based on the evidence, Counsel submits that Mr Woolhouse made minor mistakes through acts of carelessness. Mr Woolhouse has*

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<sup>8</sup> *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".

<sup>9</sup> Section 17 of the Building Act 2004

<sup>10</sup> Section 40(1) of the Building Act 2004

<sup>11</sup> *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.

*engaged in this process in a proactive and accountable manner from working at Mr and Ms [OMITTED] property to the hearing on 12 December 2024. Mr Woolhouse acted ethically when he remedied the issues at his own expense and to the client's satisfaction. At the hearing, Mr Woolhouse accepted responsibility for his mistakes and provided explanations as to why they happened.*

43. *Counsel submits, Mr Woolhouse has demonstrated the characteristics of a tradesman that is competent, responsible, and accountable. Mr Woolhouse takes pride in his work and has systems in place to ensure his work meets the high level he expects from himself. Counsel submits that this behaviour cannot be categorised as a deliberate departure of the accepted conduct therefore Mr Woolhouse is not negligent or incompetent.*
44. *Counsel submits that if the Board finds Mr Woolhouse was negligent or incompetent, Mr Woolhouse does not satisfy the threshold test. Overall, Mr Woolhouse's actions do not fall seriously short of what is considered acceptable or a deliberate departure from accepted standards.*

[23] If the contraventions were taken as single or separate incidents, the Board may have been swayed by Counsel's submissions. However, when taken as a course of conduct over the duration of the project, the Board formed the view that the conduct had fallen below an acceptable standard. In making that decision, the Board noted the lack of reference to the building consent and the failure to identify and deal with the issues caused by Mr [OMITTED]. That said, the Board does see Mr [OMITTED] conduct as a contributing factor that will be taken into account as a mitigating factor when the Board determines the appropriate penalty to apply.

#### Has the Respondent been negligent or incompetent

[24] The Respondent has conducted himself in a negligent manner.

#### **Contrary to a Building Consent**

[25] 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.<sup>12</sup> Once issued, there is a requirement that the building work be carried out in accordance with the building consent.<sup>13</sup> Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.<sup>14</sup> Inspections ensure independent verification that the building consent is being complied with.

[26] 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

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<sup>12</sup> Section 49 of the Act

<sup>13</sup> Section 40 of the Act

<sup>14</sup> Section 222 of the Act

Board does not have to find that the departure was deliberate or a result of negligent conduct.<sup>15</sup> 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 Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>16</sup> If it does not, then a disciplinary finding cannot be made.

- [27] The Respondent accepted that he had carried out building work in a manner that was contrary to the building consent issued. The Board notes that the evidence supports that admission.
- [28] The Respondent also proceeded with the cladding without satisfying himself that a pre-clad inspection had been passed. He bears joint responsibility for that failing with Mr [OMITTED].
- [29] The Board also notes the commonality between the findings under section 317(1)(b) and (d), which relate to the same conduct. It will treat the two disciplinary offences as a single offence when the appropriate penalty is determined.

### **Board Decisions**

- [30] The Respondent has breached sections 317(1)(b) and 317(1)(d) of the Act.

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

- [31] Having found that one or more of the grounds in section 317 apply, the Board must, under section 318 of the Act<sup>ii</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [32] 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

- [33] The Board has the discretion to impose a range of penalties.<sup>iii</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>17</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>18</sup>

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<sup>15</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>16</sup> *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".

<sup>17</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>18</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

- (a) protection of the public and consideration of the purposes of the Act;<sup>19</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>20</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>21</sup>
- (d) penalising wrongdoing;<sup>22</sup> and
- (e) rehabilitation (where appropriate).<sup>23</sup>

[34] 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>24</sup> and applying the least restrictive penalty available for the particular offending.<sup>25</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>26</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>27</sup>

[35] 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.<sup>28</sup>

[36] In this matter, the Board adopted a starting point of a fine of \$2,500, which reflects that the conduct was at the lower end of the scale and is consistent with the fines imposed by the Board for similar conduct. It should be noted that the Board adopted a lower starting point than it did for the related matter on the basis that the respondent's conduct was not as serious.

[37] In terms of mitigating factors, the Board has noted the impact Mr [OMITTED] conduct had on the building work, and it has reduced the fine by 20% to \$2,000.

### Costs

[38] 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>29</sup>

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<sup>19</sup> Section 3 Building Act

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

<sup>21</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>22</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>23</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>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>25</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>26</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>27</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>28</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>29</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [39] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>30</sup>. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case<sup>31</sup>.
- [40] 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 complex. The hearing was consolidated with another matter.
- [41] The Board's scale costs for a complex half-day hearing are \$4,850. As it was a consolidated hearing, the Board has decided that the Respondent should pay one-half of the scale costs. Accordingly, the Board orders that the Respondent pay the sum of \$2,425 toward the costs of and incidental to the Board's inquiry.

#### Publication

- [42] 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>32</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.
- [43] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>33</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>34</sup>
- [44] 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.

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<sup>30</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>31</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.

<sup>32</sup> Refer sections 298, 299 and 301 of the Act

<sup>33</sup> Section 14 of the Act

<sup>34</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

### Section 318 Order

[45] 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 \$2,425 (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.**

[46] 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.

### Submissions on Penalty, Costs and Publication

[47] 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 **Friday 12 September 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

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

Signed and dated this 22<sup>nd</sup> day of August 2025.



**Mr M Orange**  
Presiding Member

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

<sup>iv</sup> **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.