

Before the Building Practitioners Board

	BPB Complaint No. 26240
Licensed Building Practitioner:	John Craig Stride (the Respondent)
Licence Number:	BP 135333
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 Location	by audio-visual link
Hearing Type:	In Person
Hearing Date:	1 May 2024
Decision Date:	22 July 2024
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mr G Anderson, LBP, Carpentry and Site AoP 2
	Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

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)(i) of the Act.

The Respondent's Licence is suspended for six months, and he is ordered to pay costs of \$2,625. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary..... 2

The Charges 3

Procedure 3

Evidence..... 3

Disrepute 4

 The conduct complained about 4

The Contract..... 4

The Weather Event..... 5

The Insurance Cover 6

 Was the conduct serious enough 8

 Has the conduct brought the regime into disrepute 8

Penalty, Costs and Publication..... 8

 Penalty 9

 Costs..... 10

 Publication 11

Section 318 Order..... 11

Submissions on Penalty, Costs and Publication 12

Right of Appeal..... 12

Summary

[1] A complaint was made about a failure to obtain insurance for a new build, which was alleged to have been disreputable. To make a finding of disrepute, the Board must determine that the conduct has lowered the esteem of the licensing regime in the eyes of the public and that the conduct was serious enough for the Board to make a disciplinary finding. The Board found that the Respondent’s failure to obtain insurance in a timely manner and to make a false insurance claim was disreputable and that the Respondent’s licence should be suspended for a period of six as a result. He was also ordered to pay costs of \$2,625. The Board also decided that it would, in addition to recording the matter on the Public Register, publish its decision in Code Words.

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]Tauranga, have conducted himself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act. The specific conduct that the Board gave notice that it would investigate was whether the Respondent obtained insurance cover for the duration of the build as represented, contracted and/or invoiced.

Procedure

[4] The Respondent did not attend the scheduled hearing. The Board decided that it would proceed with the hearing but that it would adopt a procedure that would still afford the Respondent his natural justice rights. The procedure adopted was as follows:

- (a) the Board would receive the evidence of the witness that was present and would then adjourn the hearing;
- (b) a transcript of the evidence received would be produced and provided to the Respondent together with a further copy of the hearing file; and
- (c) a direction would be issued that the Respondent is to advise, no later than 10 working days after the transcript is issued to him, whether he requires that the hearing resume to him to cross-examine any of the witnesses and/or to call or give evidence in his defence.

[5] A Minute covering the above was issued. The Respondent did not reply to the Minute or request that the hearing be reconvened. The Board proceeded to make a decision.

Evidence

[6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.³ 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.

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.

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

Disrepute

- [7] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:
- criminal convictions;⁴
 - honest mistakes without deliberate wrongdoing;⁵
 - provision of false undertakings;⁶ and
 - conduct resulting in an unethical financial gain.⁷
- [8] The Courts have consistently applied an objective test when considering such conduct.⁸ The subjective views of the practitioner or other parties involved are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.⁹
- [9] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,¹⁰ that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious enough for the Board to make a disciplinary finding.¹¹

The conduct complained about

- [10] As noted, the allegation being investigated was the failure to put insurance in place, as contractually agreed, for a new build.

The Contract

- [11] The Complainant entered into a contract with the Respondent on 23 February 2022 to build a new residential dwelling on a clear site. The contract provided for \$2,000,000 of insurance cover. Clause 13.1 of the contract stipulated that, as it was a new stand-alone structure, the Builder (the Respondent) was responsible for arranging the insurance cover.
- [12] The Complainant's evidence was that the building work started on 12 April 2022. Various Site Inspection Reports from Stratum Consultants, which were on the building consent file, showed that work on the foundations was underway in May 2022. The first of those was on 3 May 2022. A report on 17 May 2022 confirmed that the building platform had been established and was adequately compacted.

⁴ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

⁵ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

⁶ *Slack, Re* [2012] NZLCDT 40

⁷ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

⁸ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

⁹ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

¹⁰ *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.

¹¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

The Weather Event

- [13] A weather event occurred on 23 May. The event damaged the building platform. The Complainant sent text messages with photos of the damage to the Respondent on that day. A Site Inspection Report dated 8 June 2022 noted damage from the event and recommended the areas be undercut and filled. The following photographs show the damage caused by the rain event.



- [14] The Complainant looked to claim on the construction insurance policy the Respondent had contracted to put in place to cover the costs associated with the damage. The Complainant gave evidence that the Respondent had assured him that insurance cover was in place and that those costs would be covered. On 6 November 2022, the Complainant wrote to the Respondent stating:

Hi John

Where are we with regards to the insurance claim please? We haven't had an update lately. You've previously said that it was all approved etc when you applied for it back in June/July.

- [15] On 17 November 2022, the Respondent replied:

Hi Aj,

I will be chasing this up today. I will be in touch once I have information.

The Insurance Cover

- [16] Insurance cover was not put in place until 14 June 2022, which was after the building work had started and the weather event had occurred. An email dated 8 June 2022 from Rothbury Insurance Brokers (Rothbury) to Ando Insurance Group Limited (Ando) a construction and engineering underwriter.

I am needing a new contract works policy please.

The client called me today and he has forgotten to contact me to put one in place.

The job has already started 1 month ago, however they have only just broken ground so very early on in the build.

Location is [OMITTED]Tauranga for a new dwelling. Contract price is \$1.4M

Can you please let me know if you will agree to cover with works already having (minimally) started?

- [17] The response from Ando on 9 June 2022, stated:

Thank you for your email.

We can review terms once we receive:

Completed proposal from

No claim declaration

Color photos of the site

Construction plan and drawing

- [18] A policy for \$1,300,000 GST exclusive of cover was then put in place for one year from 14 June 2022. The policy wording provided made it clear that cover was from the date the policy was in force (14 June 2022). Mr Stewart from Rothbury confirmed that there was no retrospective cover.
- [19] The amount of cover was less than what had contractually been agreed to and it was put in place after the weather event that caused damage occurred. There was no evidence that the late May or early June event had been disclosed when the insurance cover was sought and Mr Stewart from Rothbury confirmed there were no disclosures of it on the file.
- [20] Mr Stride made a claim on the policy on 29 August 2022. The claim stated that the loss occurred on 17 August 2022. An assessor was appointed. Questions were raised as regards a rain event on 17 August 2022 by the Assessor, who noted there was heavy rain on the 18th, but not on the 17th. The Assessor also noted that the option for land cover had not been taken in the policy cover.

- [21] An email from the Assessor to the Respondent quoted correspondence from the Respondent, in which he stated:

Hi John

I received an email that stated;

Hi Craig,

I am going through dates now.

It seems like dates have been mixed up. Wednesday the 1st of June was the first wash out. Colin could not get back on site to the 28th as work load, then a second lot of rain came through on the 17th of August but we saved the gap40- but had to claim on the man hours.

- [22] Further correspondence between the Ando and Rothbury noted:

I asked the loss adjuster to send a 14 day letter 2/12/2022 as he hadn't heard from the insured for some time. The insured then made contact, and this gave rise to Craig Lancaster's second report. The insured suddenly introduced different dates, stating that the first of two "wash-outs" occurred 1/6/2022 before inception. This event was, Craig tells me, an extreme weather event, so the event that caused the most damage. He has provided the below information and dates.

I asked Harry [OMITTED] and John [OMITTED] to check their underwriting file as it seemed to me that when cover was sought the first wash-out had already occurred. Harry confirms that this is correct, that cover was requested 8/6/2022 and that there was no mention of any damage or weather event. He believes the terms were subject to a signed no claim declaration but adds that the broker has yet to send that through.

We would like to offer a withdrawal on the basis that (1) when the first and most significant event occurred 30/5/2022 to 1/6/2022 the policy had not incepted and (2) while we were on risk when the second and less significant event occurred the costs are under excess.

- [23] On 17 January 2023 the Respondent was advised by Ando that the loss would not be covered by insurance:

Good Afternoon John,

The Assessor has submitted his report to Ando Insurance advising them that the flood event happened on 01/06/2022, which is before your construction policy start date of 14/06/2022. This means that costs related to that event will not be covered.

They've also reviewed the timesheets you've sent and are claiming for most of the hours relate to land work, which is an optional benefit the insurance

company charges extra premium for. As this wasn't selected, land related costs will also be excluded.

For non-land related work, total claimed costs would fall under the excess (I've included the Assessors notes below).

For this reason, Ando would like to know if you want to withdraw you claim. Could you please confirm?

- [24] The claim history shows that the Respondent made a claim after the insurance was in place for an event that he stated occurred on 17 August 2022 but that the damage had occurred in late May or early June, which was prior to the insurance policy being taken out and that the land cover option had not been taken so other losses claimed would not be covered.
- [25] It was clear to the Board that the Respondent had not obtained insurance prior to the start of the build, contrary to the building contract that he had entered into, and that he made an insurance claim in which he falsely claimed damage to the building site had been caused by a weather event that occurred after the insurance cover had been put in place. On the basis of those findings, the Board considers that the Respondent has brought the regime into disrepute. The finding is made on the basis that the Respondent knowingly made a false insurance claim and that he misled the Complainant as regards the status of the insurance cover and claim. Further, the Respondent, when he did arrange insurance cover, did not put the full contractually agreed amount of cover in place. The conduct has resulted in the Complainant being placed in the unenviable position of not having insurance cover for what should have been an insurable event. In those circumstances, the conduct complained about would objectively lower the reputation of Licensed Building Practitioners and the licensing regime.

Was the conduct serious enough

- [26] The conduct is serious. It was deliberate and sustained. It was conduct that should and will result in a disciplinary outcome.

Has the conduct brought the regime into disrepute

- [27] The Respondent has brought the regime into disrepute.

Penalty, Costs and Publication

- [28] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [29] The matter was dealt without the Respondent's attendance. Included was information relevant to penalty, costs, and publication. The Board has decided to

make indicative orders and give 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 requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.¹² It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹³
- (a) protection of the public and consideration of the purposes of the Act;¹⁴
 - (b) deterring other Licensed Building Practitioners from similar offending;¹⁵
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁶
 - (d) penalising wrongdoing;¹⁷ and
 - (e) rehabilitation (where appropriate).¹⁸
- [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 cases¹⁹ and applying the least restrictive penalty available for the particular offending.²⁰ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²¹ that is consistent with other penalties imposed by the Board for comparable offending.²²
- [32] 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.²³
- [33] The offending is serious. It is aggravated by the fact that the Respondent has not engaged in the disciplinary process. The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*,²⁴ the High Court

¹² *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]

¹³ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁴ Section 3 Building Act

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁸ *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

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

²⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²³ 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.

²⁴ [2011] 3 NZLR 850.

held that it can be an adverse factor when determining a penalty that the practitioner had responded in a belligerent way. Whilst not belligerent, the Respondent has not cooperated.

- [34] The Board considers the Respondent may pose a risk to the public. Whilst his competence as a Licensed Building Practitioner has not been called into question, his ethics have. Given those circumstances, the Board considered a penalty that protects the public and deters others to be appropriate. To that end, it decided that the starting point would be the cancellation of the Respondent's licence.
- [35] The Respondent has previously appeared before the Board regarding a disciplinary matter. In 2022, the Board found that the Respondent had committed disciplinary offences under sections 317(1)(b) and (d) of the Act. The Respondent was fined \$2,000 and ordered to pay costs of \$3,500. Following that decision, the Respondent did not pay the fine or the costs. As a result, under section 319 of the Act, the Respondent's licence was suspended on 2 September 2022. It was reactivated on 18 October 2022. The previous finding and the failure to adhere to a disciplinary order is an aggravating factor.
- [36] The Board has considered whether the suspension rather than the cancellation of the Respondent's licence would suffice. It has decided that it will. A six-month suspension will give the Respondent an opportunity to reflect on his conduct and serve as a warning to other practitioners.

Costs

- [37] 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.²⁵
- [38] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁶. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case²⁷.
- [39] 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.
- [40] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,625 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a matter that is dealt with by way of a half-day audio-visual hearing.

²⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁷ *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

- [41] 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,²⁸ 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.
- [42] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁹ 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.³⁰
- [43] Based on the above, the Board will order further publication. The Board considers that publication is required given the suspension of the Respondent's licence and so that others can learn from the matter. The publication will be by way of an article in Code Words.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(b) of the Building Act 2004, the Respondent's licence is suspended for a period of six [6] months, and the Registrar is directed to record the suspension in the of Licensed Building Practitioners.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,625 (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(I)(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 there will be action taken to publicly notify the Board's action.

- [45] 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.

²⁸ Refer sections 298, 299 and 301 of the Act

²⁹ Section 14 of the Act

³⁰ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [46] 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 27 November 2024. 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

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

Signed and dated this 7th day of November 2024



M Orange
Presiding Member

ⁱ **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (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.*

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- (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.*