

## Before the Building Practitioners Board

	BPB Complaint No. 26495
Licensed Building Practitioner:	Kieran Stephen Mace (the Respondent)
Licence Number:	BP 129863
Licence(s) Held:	Carpentry

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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	Complaint
Hearing Location	Various locations around New Zealand
Hearing Type:	Audio Visual Link
Hearing Date:	29 November 2024
Decision Date:	4 March 2025

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs Faye Pearson Green, Deputy Chair, LBP, Design AoP 2  
Mr G Anderson, LBP, Carpentry and Site AoP 2  
Mr T Tran, Barrister– Legal Member

#### Appearances:

A Williams, counsel for the Respondent

#### Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

#### Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act.

The Respondent is ordered to pay a fine of \$1,000 and costs of \$2,150. 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 complaint relates to building work carried out [OMMITTED], Auckland (the Property). The work involved converting an existing bathroom into an accessible bathroom for a wheelchair-bound occupant. The building work was carried out between 27 September 2021 and 8 October 2021.
- [2] The Respondent was engaged as a subcontractor through [OMITTED] to carry out the carpentry work, which included alterations to sub-floor framing and internal framing and the installation of new GIB linings.
- [3] Following concerns about the quality of work, [OMITTED] were engaged to assess the building work. Their inspection identified significant defects affecting weathertightness and structural integrity. The Respondent, through his counsel, acknowledged the defects existed but maintained they were not serious enough to warrant disciplinary action.
- [4] A hearing was held on 29 November 2024, where the Board reserved its decision.
- [5] The Board has determined that the Respondent has committed a disciplinary offence under section 317(1)(b) of the Act.

### The Charge

- [6] 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>
- [7] In this matter, the disciplinary charges the Board resolved to investigate were whether the Respondent had carried out building work in a negligent manner contrary to section 317(1)(b) of the Act. Specifically, the Board investigated the quality and compliance of:
- (a) Floor framing (including timber treatment, layout, spans and blocking);
  - (b) Shower wall framing and blocking;
  - (c) Flooring substrate installation;
  - (d) Junction between timber and tile flooring; and
  - (e) Use of vertical metal angle in wet area linings.

### Procedure

- [8] Having considered the evidence and the disciplinary charge, the Board's reasons are set out in this decision. The Board has also set out an indicative decision on penalty, costs and publication.
- [9] The Board will give the Respondent an opportunity to provide submissions on penalty, costs and publication within **15 working days** from the date of this decision.

### Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.<sup>2</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.
- [11] The Board heard evidence about building work carried out at the Property between 27 September and 8 October 2021. The work involved converting an existing bathroom into an accessible bathroom for [OMITTED], who was wheelchair-bound. The work was undertaken without a building consent, with the intention of obtaining a Certificate of Acceptance afterwards due to the urgent need for [OMITTED] to move into the Property.
- [12] Form Renovations Limited, the main contractor, engaged [OMITTED] to carry out some of the work. The contract scope for [OMITTED] alterations to sub-floor framing,

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

internal framing including new infill framing and studs/nogs, and installation of new GIB linings. The Respondent carried out this work as [OMITTED] LBP.

- [13] Following concerns about the quality of work, the homeowners engaged [OMITTED] to assess the building work. [OMITTED] and [OMITTED] conducted visual and invasive inspections. Their report identified multiple defects, including:
- (a) The shower floor having only 12mm fall across 1400mm rather than the specified 25mm;
  - (b) Use of H1.2 timber where H3.2 was specifically required;
  - (c) Installation of a 45mm wall on edge rather than the specified 90mm wall;
  - (d) Missing GIB metal angles in wet area corners;
  - (e) Missing blocking and incorrect timber installation.
- [14] [OMITTED] of [OMITTED] and [OMITTED], LBP Carpenter of [OMITTED], were present at the hearing and gave their evidence. [OMITTED] and [OMITTED] conducted a thorough assessment of the Property, including visual and invasive inspections. Their report, based on their professional expertise, provided the Board with a detailed evaluation of the building work in question.
- [15] [OMITTED] of [OMITTED] gave evidence regarding contract development. While acknowledging receipt of the Measure & Draw plans when preparing the contract, he stated he had no direct site involvement and that specifications in their schedule were for costing rather than construction purposes.
- [16] Through counsel at the hearing, the Respondent maintained that some defects resulted from work by other trades and site agreements regarding construction methods. He claimed certain items were outside his contractual scope but provided no documentary evidence of such agreements or limitations.
- [17] The Board notes for completeness that the matter proceeded to the Disputes Tribunal, which found the building work was non-compliant in several aspects. The Tribunal ordered Form Renovations Limited to pay the homeowners \$30,000.00, of which \$30,000.00 was recoverable from [OMITTED]. However, the Disputes Tribunal findings are not directly relevant to the Board's own assessment in this disciplinary context.

## Negligence

- [18] To find the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>3</sup> 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>4</sup> test of negligence.<sup>5</sup> Even if the Respondent has been negligent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>6</sup> If it does not, then a disciplinary finding cannot be made.
- [19] When considering what an acceptable standard is, the Board must consider the purpose of the Act<sup>i</sup> as well as the requirement that all building work must comply with the Building Code<sup>7</sup> and any building consent issued.<sup>8</sup> The test is an objective one.<sup>9</sup>
- [20] In this case, the Board must determine if the Respondent departed from accepted standards and whether any departure fell seriously short of expected standards. The hearing focused on five specific areas of concern (as set out above) and we address our findings in turn below:
- (a) **Floor Framing:** The Measure & Draw plans specified H3.2 SG8 timber for all wet area floor framing, joists and nogs at 400mm centres, and a minimum 25mm fall in the shower area. Project Analytics' inspection found multiple defects. H1.2 timber was used instead of H3.2, and in some areas ungraded H3 roughsawn timber and untreated timber were found. Floor Joists orientation changed from the supplied plans, and as a result, they exceeded maximum spans and lacked proper fixings like brackets and hangers where they met trimmers. The shower floor achieved only 12mm fall across 1400mm. [OMITTED] gave evidence that joist orientation was outside their scope, but the contract specifically included alterations to the sub-floor framing as required for the proposed tiled, level-entry shower. The drainage rebate for the shower waste was not constructed in the floor framing, as shown in the drawings and specifications. The Respondent advised that this was left for the tiler to resolve.[OMITTED] concluded these defects would lead to structural failures once the bathroom was in use.

<sup>3</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>4</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

<sup>5</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>6</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>7</sup> Section 17 of the Building Act 2004.

<sup>8</sup> Section 40(1) of the Building Act 2004.

<sup>9</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.

- (b) **Shower Wall Framing:** The plans required 90mm wall framing using H3.2 SG8 timber at 400mm centres. Instead, a 45mm wall was installed on edge in the shower area. The timber blocking installed for disability rails and grab handles used incorrect grades and was inadequately fixed, with gaps of 10mm or more behind the GIB, creating a risk that seat or rail installation would damage waterproofing. The wall flexed due to inadequate fixing to the original kitchen wall. While the Respondent claimed that the 45mm wall was agreed on site to maintain internal dimensions, no evidence of such agreement was provided.
- (c) **Flooring Substrate:** The plans specified H3.2 CCA treated 20mm plywood for the entire bathroom floor. The investigation found the plywood was only installed under the tile area, used incorrect grades including H1.2 plywood, and incorporated old Rimu rippings and joists for packing under the plywood in the tiled area. The drainage rebate for the shower waste was not constructed as specified, resulting in the required fall to the shower drainage channel not being achievable - instead, a levelling compound was used to build up under tiles. [OMITTED] found these defects created a high risk of substrate failure.
- (d) **Junction between Timber and Tile Flooring:** The junction between floor types required specific detailing, including proper substrate transition and waterproofing. Inspectors found gaps under tiles, incorrect timber installation, and missing structural blocking at this critical junction. Project Analytics' photos showed the improper installation of both substrate materials. [OMITTED] response claimed only 4m<sup>2</sup> of flooring work, but the contract and plans encompassed the entire bathroom floor, including junctions.
- (e) **Vertical Metal Angles:** The plans and GIB wet area systems documentation required 32x32x0.55mm galvanised steel angles in shower corners. These were omitted entirely. While [OMITTED] argued this was not mandatory, the documentation clearly specified this requirement for tile support and waterproofing integrity. The Respondent claimed blocking was originally present, but photographic evidence showed it was never installed correctly. The investigation found no evidence of proper corner protection or fixing at the critical left-hand junction.

[21] In applying the *Bolam* test, the Board carefully considered whether the Respondent's actions fell below the accepted standard of conduct for an LBP in the same class of licence. The Board heard evidence from [OMITTED] and [OMITTED], who detailed the various defects and non-compliant work carried out by the Respondent. This evidence, along with the documentation presented demonstrated a clear departure from the standards expected of a reasonably competent LBP. The Respondent's actions were found to be seriously short of the expected standards in all five areas investigated.

- [22] Accordingly, these deficiencies, taken together, satisfy the *Bolam* test for negligence warranting disciplinary action under section 317(1)(b) of the Act.

### Penalty, Costs and Publication

- [23] Having found that one of the grounds in section 317 applies, 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.

### Penalty

- [24] 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 to balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>10</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>11</sup>
- (a) Protection of the public and consideration of the purposes of the Act;<sup>12</sup>
  - (b) Deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>13</sup>
  - (c) Setting and enforcing a high standard of conduct for the industry;<sup>14</sup>
  - (d) Penalising wrongdoing;<sup>15</sup> and
  - (e) Rehabilitation (where appropriate).<sup>16</sup>
- [25] 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>17</sup> and applying the least restrictive penalty available for the particular offending.<sup>18</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>19</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>20</sup>

<sup>10</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>11</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29].

<sup>12</sup> Section 3 Building Act 2004.

<sup>13</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>14</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724.

<sup>15</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27.

<sup>16</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>17</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.

<sup>18</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818.

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.

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

- [26] 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>21</sup>
- [27] When considering the penalty in this case, the Board set a starting point of a \$2,000 fine. However, the Board has reduced the fine to \$1,000 due to the Respondent's cooperation, because he has not previously appeared before the Board and is willing to rectify the issues.

### Costs

- [28] 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>22</sup>
- [29] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>23</sup> The starting point can then be adjusted up or down with regard to the particular circumstances of each case.<sup>24</sup>
- [30] 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 Board has categorised this hearing as moderate. Adjustments are then made.
- [31] Based on the above, the costs order is \$2,150.

### Publication

- [32] 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>25</sup> and he will be named in this decision, which will be available on the Board's website.
- [33] The Board is also able, under section 318(5) of the Act, to order further publication.
- [34] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>26</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

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<sup>21</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>22</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

<sup>23</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011.

<sup>24</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>25</sup> Refer sections 298, 299 and 301 of the Act.

<sup>26</sup> Section 14 of the Building Act 2004.



that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>27</sup>

- [35] In this case, 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.

### Section 318 Order

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

**Penalty:** Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is fined \$1,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(1)(l)(iii) of the Act.

**In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.**

- [37] The Respondent should note the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

### Submissions on Penalty, Costs and Publication

- [38] The Board invites the Respondent to:

- (a) Make written submissions on the Board's findings on penalty, costs and publication.
- (b) Submissions must be filed with the Board **15 working days** from the date of this decision.
- (c) If submissions are received, then the Board will meet and consider those submissions.
- (d) The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision on penalty, costs and publication.

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<sup>27</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055.

- [39] If no submissions are received within the time frame specified, then this decision will become final.

### **Right of Appeal**

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

Signed and dated this 21st day of March 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.*

#### **<sup>ii</sup> 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.*

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***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.*