

**Before the Building Practitioners Board**

BPB Complaint No. 26801

Licensed Building Practitioner: Lixin Wei (the Respondent)

Licence Number: BP 104713

Licence(s) Held: LBP Carpentry; Site 1 & 2

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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 Type: On the Papers

Draft Decision Date: 23 September 2025

Final Decision Date: 14 January 2026

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)

Mr G Pearson, Barrister and Solicitor – Legal Member

Mr G Anderson, LBP, Carpentry and Site AoP 2

Ms E Harvey McDouall, Registered Architect

**Procedure:**

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

**Disciplinary Finding:**

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

The Respondent is fined \$1,000 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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### Summary of the Board's Decision

[1] The Respondent failed to provide a record of work on completion of restricted building work. In the Draft Decision, the Board indicated that it would fine the Respondent \$1,500. The Respondent filed submissions on the Draft Decision. He did not contest the findings. He did put forward additional mitigating factors that he asked the Board to take into consideration. On the basis of those submissions, the Board decided it would reduce the penalty to \$1,000. The Respondent is also to pay costs of \$700. The disciplinary finding will be recorded on the public Register for a period of three years.

### The Charges

[2] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar's Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies. Having received the report, the Board decided that regulation 9 applied to some but not to all of the allegations.

### Regulation 10 Decision

[3] In this matter, the disciplinary charge the Board resolved to further investigate<sup>1</sup> was that the Respondent may, in relation to building work at [Omitted], Auckland, have failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.

### Regulation 9 Decisions

[4] The complaint to the Board also contained allegations that the Respondent had:

- (a) carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
- (b) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

[5] With regard to the allegations made, the Board decided that regulation 9(e) of the Complaints Regulations applied. It provides:

***Complaint not warranting further investigation***

*A complaint does not warrant further investigation if—*

- (e) there is insufficient evidence to warrant the investigation of the complaint;*

[6] To test sufficiency, the Board needs to inquire whether there is evidence which, if un-contradicted, would, having regard to the degree of proof demanded<sup>2</sup>, justify consideration of the complaint.

[7] On reviewing the complaint and the evidence put forward, the Board decided that there was insufficient evidence and that further investigation of the allegations was not warranted.

### **Draft Decision Process**

[8] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.

[9] Ordinarily, the Board makes a decision after holding a hearing.<sup>3</sup> The Board may, however, depart from its normal procedures if it considers that doing so would

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<sup>1</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.

<sup>2</sup> The burden in complaints is on the balance of probabilities per *Z v Dental Complaints Assessment Committee [2009] 1 NZLR 1*

<sup>3</sup> Regulation 10 of the Complaints Regulations.

achieve the purposes of the Act, and it is not contrary to the interests of natural justice.<sup>4</sup>

[10] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled. The Respondent did not request a hearing.

### **Evidence**

[11] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed<sup>5</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.

### **Failure to Provide a Record of Work**

[12] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority (TA) on completion of their restricted building work.<sup>6</sup>

[13] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the TA on completion of restricted building work<sup>7</sup> unless there is a good reason for it not to be provided.<sup>8</sup>

### Did the Respondent carry out or supervise restricted building work?

[14] The Respondent was engaged as the LBP Carpenter onsite by the main contractor to carry out and/or supervise building work concerning alterations to a dwelling under a building consent. This work included re-cladding an external wall, roof and balustrade and installation of a roof canopy, replacement of membranes on terraces and a deck. The work is restricted building work because it was performed on part of the primary structure and/or external moisture management system of a residential dwelling.<sup>9</sup>

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<sup>4</sup> Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No. [2013] NZHC 2289, Orlov v National Standards Committee 1 [2013] NZHC 1955*

<sup>5</sup> *Z v Dental Complaints Assessment Committee [2009] 1 NZLR 1*

<sup>6</sup> Section 88(1) of the Act.

<sup>7</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>8</sup> Section 317(1)(da)(ii) of the Act

<sup>9</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

[15] The Respondent has not disputed that he was the person primarily responsible for this work.

Was the restricted building work complete?

[16] The Respondent completed his work on 2 December 2023, or thereabouts, when his contract came to an end. The undisputed information presented to the Board indicates that this is the case.<sup>10</sup>

Has the Respondent provided a record of work?

[17] The Respondent has been requested to supply a Record of Work, but he has not supplied it to the owner or the TA, as per the requirements of section 88(1) of the Act.

Was there a good reason

[18] No justification is evident for the Respondent's failure to provide a record of work. As an LBP undertaking restricted work, the Respondent was required to provide the documents upon completion of his work.

Did the Respondent fail to provide a record of work

[19] The information before the Board is that the record of work has still not been supplied, despite notification of this complaint to the Respondent. Accordingly, not only has there been an extreme delay in fulfilling his professional obligation to comply with the law, but the Respondent also remains in default.

[20] The Respondent, in his response, indicated he did provide a record of work to the owner on 19 June 2025. If he did, the provision came after the complaint had been made by the owner about a failure to provide it, and he has not provided a copy of it to the Board. Also, the provision was 18 months late.

**Further Evidence and Submissions Received**

[21] Following the Board issuing a Draft Decision, it received a submission from the Respondent and a supporting submission and statement from a person who has been assisting him. The Respondent did not dispute the Board's findings. He did put forward various mitigating factors that he asked the Board to take into account in relation to the penalty.

**Penalty, Costs and Publication**

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

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<sup>10</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

[23] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.

Penalty

[24] The Board has the discretion to impose a range of penalties. 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>11</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>12</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>13</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>14</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>15</sup>
- (d) penalising wrongdoing;<sup>16</sup> and
- (e) rehabilitation (where appropriate).<sup>17</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>18</sup> and applying the least restrictive penalty available for the particular offending.<sup>19</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>20</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>21</sup>

[26] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.<sup>22</sup>

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<sup>11</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>12</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>13</sup> Section 3 Building Act

<sup>14</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>15</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>16</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>17</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>18</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>19</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

<sup>22</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.

- [27] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour.
- [28] In its Draft Decision, the Board provided the Respondent with an opportunity to provide the Board and the TA with his record of work, and it noted that the fine would be reduced by \$500 if he did. The Respondent was not able to provide a copy, but he did make submissions regarding why he could not and stated that he had provided it in or about June 2025. The Board has accepted that he may have provided it as outlined in the submissions. The fine is reduced to \$1,000.
- [29] The Respondent and the supporting submissions also raised what they considered to be additional mitigating factors. The Board does not consider that those submissions warrant any further reductions. The submissions focused on matters that occurred well after completion and related to delays in obtaining advice. The essential fact is that the record of work should have been provided in or about December 2023, and the Respondent, as a licensed person, should have been aware of his obligations.

#### Costs

- [30] 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>23</sup>
- [31] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>24</sup> The starting point can then be adjusted up or down, depending on the particular circumstances of each case.<sup>25</sup>
- [32] 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 simple. Adjustments are then made.
- [33] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of the actual costs.

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<sup>23</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>24</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>25</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.

## Publication

- [34] 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>26</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.
- [35] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>27</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>28</sup>
- [36] 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.

## **Section 318 Order**

- [37] 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 \$1,000.
  - Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (GST included) towards the costs of, and incidental to, the inquiry of the Board.
  - Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(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.**
- [38] 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.

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<sup>26</sup> Refer sections 298, 299 and 301 of the Act

<sup>27</sup> Section 14 of the Act

<sup>28</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

### Right of Appeal

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

Signed and dated this 30<sup>th</sup> day of January 2026



**Mr M Orange**  
Presiding Member

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#### <sup>i</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."*

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