Before the Building Practitioners Board

	BPB Complaint No. 26649
Licensed Building Practitioner:	Matthew Graham Burrell (the Respondent)
Licence Number:	BP 131373
Licence(s) Held:	Carpentry, Site (Site 2)

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 Type:	On the Papers
Draft Decision Date:	11 April 2025
Final Decision Date:	6 October 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
Mr C Lang, Building Surveyor and 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 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. The Board indicated that it would impose a fine of $1,500 but noted that if the Respondent provided a record of work by the close of the submission period allowed in the Draft Decision, the fine would be reduced to $1,000. A record of work was provided. The fine is set at $1,000. The Respondent is ordered to pay costs of $500.

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 charge the Board resolved to further investigate was that the Respondent may, in relation to building work at [OMITTED], have failed,

[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.

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.

Draft Decision Process

[4] The Board's jurisdiction is that of an inquiry. Matters 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.

[5] Ordinarily, the Board makes a decision having held a hearing.[2] The Board may, however, depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.[3]

[6] 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.

Evidence

[7] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[4]. 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

[8] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.[5]

[9] 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

[2] Regulation 22 of the Complaints Regulations.
[3] 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.
[4] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.
[5] Section 88(1) of the Act.

Territorial Authority on completion of restricted building work[6] unless there is a good reason for it not to be provided.[7]

Did the Respondent carry out or supervise restricted building work

[10] The Respondent was engaged as the contractor to carry out building work at [OMITTED]. The work included the construction of foundations, framing, structural steel, and trusses. This was restricted building work because it included the primary structure of a residential dwelling.

[11] Evidence was provided to the Board to establish that the Respondent was the Licensed Building Practitioner who carried out and/or supervised the restricted building work. This includes the Respondent's own admission that he carried out the foundations, framing, structural steel, and trusses between May 2022 and August 2022.

[12] The Board also notes that the Respondent was the only LBP onsite during the period of the building work, working alongside his business partner, Brent Laban, as the qualified carpenter.

Was the restricted building work complete

[13] The Complainant and the Respondent both confirmed that the Respondent's building work was undertaken between May 2022 and August 2022.

[14] In this instance, the Board finds that completion of the Respondent's work occurred in August 2022 at the latest.

Has the Respondent provided a record of work

[15] The Complainant filed the complaint on 1 November 2024 and stated that the Respondent had failed to provide a Record of Work upon the conclusion of his work at the Property.

[16] In an email dated 20 September 2024, the Respondent acknowledged his obligation to submit the Record of Work to the Council but explicitly conditioned this on payment of an outstanding invoice, stating he would provide the Record of Work once payment was made.

[17] The Council property file was reviewed as part of the investigation, and it did not contain a record of work from the Respondent.

Was there a good reason

[18] In his response to the complaint, the Respondent stated that he had withheld the Record of Work due to an outstanding invoice. He acknowledged that he understood this was breaching the Building Act, but maintained that he would supply the required documentation once the bill was paid.

[6] Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011.
[7] Section 317(1)(da)(ii) of the Act.

[19] The Board does not consider this to be a "good reason" for not providing a record of work. The obligation under section 88(1) of the Act is on the licensed building practitioner who carries out or supervises restricted building work to provide a record of work on completion of that work. The Board has consistently found that withholding a record of work to enforce payment is not a good reason.

[20] The Respondent himself acknowledged that he understood his obligations regarding a Record of Work, but withheld it, nevertheless.

[21] The Board, therefore, finds that no "good reason" has been established for the failure to provide the record of work on completion.

Did the Respondent fail to provide a record of work

[22] Accordingly, the Respondent failed to provide a record of work on completion of the restricted building work in breach of section 88 (1) of the Act.

Further Evidence and Submissions Received

[23] Following the Board issuing a Draft Decision, it received a record of work from the Respondent. It has taken that provision into account as a mitigating factor in relation to the appropriate penalty to be imposed.

Board's Decision

[24] The Respondent **has** failed to provide a record of work on completion of restricted building work.

Penalty, Costs and Publication

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

[26] 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

[27] 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.[8] It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:[9]

(a) protection of the public and consideration of the purposes of the Act;[10]

(b) deterring other Licensed Building Practitioners from similar offending;[11]

(c) setting and enforcing a high standard of conduct for the industry;[12]

(d) penalising wrongdoing;[13] and

(e) rehabilitation (where appropriate). [14]

[28] 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[15] and applying the least restrictive penalty available for the particular offending.[16] In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty [17] that is consistent with other penalties imposed by the Board for comparable offending.[18]

[29] 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.[19]

[30] 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.

[31] The Board provided the Respondent with an opportunity to provide a record of work before it made a final decision. He provided one, and, on that basis, the penalty is reduced by $500 to $1,000.

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[8] *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].
[9] Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29].
[10] Section 3 Building Act.
[11] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.
[12] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724.
[13] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27.
[14] *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.
[15] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[16] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818.
[17] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.
[18] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.
[19] 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.

Costs

[32] 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.[20]

[33] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.[21] The starting point can then be adjusted up or down, having regard to the particular circumstances of each case[22].

[34] 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.

[35] 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.

Publication

[36] 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,[23] 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.

[37] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.[24] 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.[25]

[38] 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.

[39] 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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[20] *Collie v Nursing Council of New Zealand* [2001] NZAR 74.
[21] *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011.
[22] *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.
[23] Refer sections 298, 299 and 301 of the Act.
[24] Section 14 of the Act.
[25] *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055.

Section 318 Order

[40] 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.

[41] 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.

Right of Appeal

[42] The right to appeal Board decisions is provided for in section 330(2) of the Act[iii].

Signed and dated this 15th day of October 2025

Mr M Orange
Presiding Member

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[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.

(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.