

Before the Building Practitioners Board

	BPB Complaint No. CB25695
Licensed Building Practitioner:	Kahl Phillips (the Respondent)
Licence Number:	BP124533
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	Board Inquiry
Hearing Location	Hamilton
Hearing Type:	In Person
Hearing Date:	24 November 2021
Decision Date:	3 December 2021

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr C Preston, BPB Chair
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mr R Shao, LBP, Carpentry and Site AOP 1
Ms J Clark, Barrister and Solicitor, Legal Member

Procedure:

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

Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b) and 317(1)(d) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent carried out or supervised building work in a negligent manner and in a manner that was contrary to a building consent. He is ordered to undertake the training specified in the order and to pay costs of \$2,000.
- [2] The Respondent has not committed the disciplinary offence of failing to provide a record of work on completion of restricted building work.

The Charges

- [3] The hearing resulted from a Board Inquiry into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act) as detailed in the report of [Omitted] dated 24 July 2020 (Document 2.1.13 and Page 43 of the

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

Board's file) and Taupo District Council Site Notices dated 19 November 2019 and 13 March 2020 (Document 4.2 and Pages 511 and 515 of the Board's file);

- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act) as detailed in (a) above; and
- (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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) (s 317(1)(da)(ii) of the Act).

Function of Disciplinary Action

- [4] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

Inquiry Process

- [5] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar's Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.
- [6] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

Background to the Board Inquiry

- [7] On 7 December 2020, the Building Practitioners Board resolved to launch an inquiry into the conduct of the Respondent, based on information received in a complaint (CB25602). Both matters related to the same building site but were not consolidated as the party to CB25602 did not agree to do so. However, the hearings were conducted sequentially so that the Respondent was present as a witness for the hearing on CB25602, and evidence received by the Board at that hearing was

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

relevant to and has been relied on in respect of this matter. The Respondent was informed at the commencement of the hearing that the Board would be taking evidence heard in respect of CB25602 into account in this matter.

Evidence

- [8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [9] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [10] In addition to the documentary evidence before the Board, it heard evidence at the hearing from:
- | | |
|----------------|--|
| Kahl Phillips | The Respondent |
| [Omitted] | Complainant in CB25602 |
| [Omitted] | Building Consultant |
| Martyn Trainor | Building Consent Officer, Taupo District Council |
| Dean Southey | Building Consent Officer, Taupo District Council |
- [11] [Omitted], the respondent in CB25602, was also summoned to the hearing, He gave evidence in respect of the hearing into the complaint about him, and that evidence has been included in respect of this matter. His appearance at this matter was, however, excused on the basis that no further evidence from him was required.
- [12] The Respondent was employed by [Omitted] to construct a new residential dwelling using a pole barn. A building consent was issued on 23 September 2016, and the work the Respondent had contracted to do was complete in March 2017. The Respondent left his position of employment in May 2017.
- [13] A report by [Omitted], Building Consultant, dated 24 July 2020, highlighted several framing, foundation, window, and flashing issues. [Omitted] concluded that the workmanship was poor, was not what you would expect a qualified carpenter to produce, and that the issues should have been picked up by a supervisor as the work proceeded.

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [14] The Taupo District Council site notices for two failed Code Compliance Inspections detailed numerous building code and building consent compliance issues.
- [15] The Respondent outlined his work process - meeting each morning at the depot, organising the workforce, and talking through the tasks with the builders for each of the projects he was supervising. On this project, the Respondent explained that he had a builder of four years experience and two hammer-hands. He stated that he visited the site fortnightly, and he instructed the builder not to close in work until he had been able to inspect it.
- [16] Contrary to this instruction, the Respondent gave evidence that the builder often “charged ahead”. He admitted that it was difficult to supervise this person and to discuss any issues without the situation becoming fiery. He stated he was new to supervising and was “out of his depth”. The Respondent advised that he thought that the builder was more competent than he was and that this was a mistake.
- [17] The Respondent advised that he was supervising four other projects at the same time – spread across the upper North Island. He felt he was time pressured. He visited this project fortnightly.
- [18] The Board put to the Respondent the workmanship issues identified in [Omitted]report and the Taupo District Council Site Notices. He accepted all of the compliance issues in the Council notices. The Respondent said that he felt for the Complainant and would be happy to rectify the issues.
- [19] A record of work was provided to [Omitted], the homeowner, in March 2017, immediately after the work was completed. [Omitted] confirmed this. It was provided to the Taupo District Council on 17 September 2018. The record of work was issued by [Omitted], but signed by the Respondent.
- [20] The Respondent conceded that the record of work was not completed correctly and that he should not have done it in the way he did. He did not have any explanation for why it was done that way. The Respondent was under the impression that the record of work was a process of signing off the work as correct and complete. The Board took the opportunity to explain to the Respondent that it is a record of who did what work and is not a statement as to the quality of the work. The Respondent confirmed that he is now completing records of work correctly.

Board’s Conclusion and Reasoning

- [21] The Board has decided that the Respondent **has**:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act)
- and **should be** disciplined.

- [22] The Board has also decided that the Respondent **has not** failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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) (s 317(1)(da)(ii) of the Act).
- [23] The reasons for the Board’s decisions follow.

Negligence and/or Incompetence

- [24] Negligence is the departure by a licensed building practitioner whilst carrying out or supervising building work from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the Bolam⁵ test of negligence which has been adopted by the New Zealand Courts⁶.
- [25] Incompetence is a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard. Beattie put it as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*,⁷ it was stated as “an inability to do the job”.
- [26] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test⁸. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [27] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purpose of the Act.⁹ The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁰
- [28] The Board notes that the purposes of the Act are:

3 Purposes

This Act has the following purposes:

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹⁰ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- (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.*

[29] The Board accepts that the Respondent's role in the build was as the supervisor. The question for it is whether the Respondent has been negligent or incompetent as regards his supervision of the building work.

[30] Supervise is defined in section 7¹¹ of the Act. The definition states:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

- (a) *is performed competently; and*
- (b) *complies with the building consent under which it is carried out.*

[31] In C2-01143¹², the Board also discussed the levels of supervision it considers are necessary to fulfil a licensed building practitioner's obligations noting that the level of supervision required will depend on a number of circumstances, including:

- (a) the type and complexity of the building work to be supervised.
- (b) the experience of the person being supervised.
- (c) the supervisor's experience in working with the person being supervised and their confidence in their abilities.

¹¹ Section 7:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

- (a) *is performed competently; and*
- (b) *complies with the building consent under which it is carried out.*

¹² *Licensed Building Practitioner's Board Case Decision C2-01143* 14 April 2016

- (d) the number of persons or projects being supervised; and
- (e) the geographic spread of the work being supervised.
- [32] Ultimately, the Board also needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.
- [33] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to Electricity Act 1992¹³. The definition of supervision in that Act is consistent with the definition in the Building Act and, as such, the comments of the court are instructive. In the case, Judge Tompkins stated at paragraph 24:
- “As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”*
- [34] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁴ the Court’s noted, as regards the threshold for disciplinary matters, that:
- [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.*
- [35] The site notices from Taupo District Council set out numerous and serious compliance issues. As noted, the Respondent accepted responsibility for these failures. These were significant mistakes that a Licensed Building Practitioner should not have made. The Respondent’s level and frequency of supervision given to the builders on site was not acceptable.
- [36] On that basis, the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

¹³ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

¹⁴ [2001] NZAR 74

Contrary to a Building Consent

[37] Under section 40 of the Act, all building work must be carried out in accordance with the building consent issued. Section 40 provides:

40 Buildings not to be constructed, altered, demolished, or removed without consent

(1) *A person must not carry out any building work except in accordance with a building consent.*

(2) *A person commits an offence if the person fails to comply with this section.*

(3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

[38] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and that the works will meet the required performance criteria in the Building Code. In doing so, the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act.

[39] Once a building consent has been granted, any changes to it must be dealt with in the appropriate manner. There are two ways in which changes can be dealt with; by way of a minor variation under section 45A of the Act; or as an amendment to the building consent. The extent of the change to the building consent dictates the appropriate method to be used. The critical difference between the two options is that building work under a building consent cannot continue if an amendment is applied for.

[40] If changes are made to what is stipulated in the building consent, and the correct process for the change is not used, then the building work can be said to have not been completed in accordance with the building consent. Unlike negligence contrary to a building consent is a form of strict liability offence. All that needs to be proven is that the building consent has not been complied with. No fault or negligence has to be established¹⁵.

[41] Given the above factors and the admissions of the Respondent, the Board finds that the building consent had not been complied with. It is noted, however, that the finding of negligence and that of building contrary to a building consent are integrally connected and, as such, they will be treated as a single offence when the Board considers penalty.

¹⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

Record of Work

- [42] 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 territorial authority on completion of restricted building work.¹⁶
- [43] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [44] The Board discussed issues with regard to records of work in its decision C2-01170¹⁷ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [45] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [46] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”. As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*¹⁸ “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [47] As to when completion will have occurred is a question of fact in each case.
- [48] The Board accepts on the evidence before it that a record of work was provided to the homeowner in March 2017 and that this was immediately upon completion. As such, the Board finds that no disciplinary offence has been committed under section 317(1)(da)(ii) of the Act.

Penalty, Costs and Publication

- [49] 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.

¹⁶ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹⁷ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

¹⁸ [2018] NZHC 1662 at para 50

- [50] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [51] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁹ commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [52] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,²⁰ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act, they do have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [53] The Board accepts that the Respondent was new to the supervisory role and was, in his words, out of his depth. The Board also noted that particular difficulties were encountered in managing some of his builders. The Board considers that the Respondent would benefit from undertaking some supervision training.
- [54] Based on the above, the Board’s penalty decision is to order that the Respondent undertake the New Zealand Certificate in Construction Related Trades (Supervisor) as specified in the order below.

Costs

- [55] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”
- [56] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²¹.

¹⁹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁰ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

²¹ *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.

[57] In *Collie v Nursing Council of New Zealand*,²² where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

[58] Although it did not eventuate, the Respondent did agree to consolidate this hearing with the related hearing under CB25602. This is a relevant factor in reducing the costs order from what would have been an amount of \$4,000 for a consolidated hearing.

[59] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,000 toward the costs of and incidental to the Board's inquiry.

Publication

[60] 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 Act²³. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

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.

[61] As a general principle, such further public notification 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. This is in addition to the Respondent being named in this decision.

[62] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990²⁴. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁵. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁶. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁷.

[63] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁸.

²² [2001] NZAR 74

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

²⁵ Refer sections 200 and 202 of the Criminal Procedure Act

²⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁷ *ibid*

²⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[64] Based on the above, the Board will not order further publication.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(e) of the Act, the Respondent is ordered to undertake and complete the following training:

New Zealand Certificate in Construction Related Trades (Supervisor) to the satisfaction of the Registrar within 18 months of this order and at the Respondent's cost.

If the Respondent fails to complete the training specified in this order, then pursuant to section 318(b) of the Act, the Respondent's licence will be suspended until the earlier of the Respondent completing the training to the satisfaction of the Registrar or the expiry of a period of 18 months and the Registrar will be directed to record the suspension in the register of Licensed Building Practitioners.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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, there will not be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

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

Submissions on Penalty, Costs and Publication

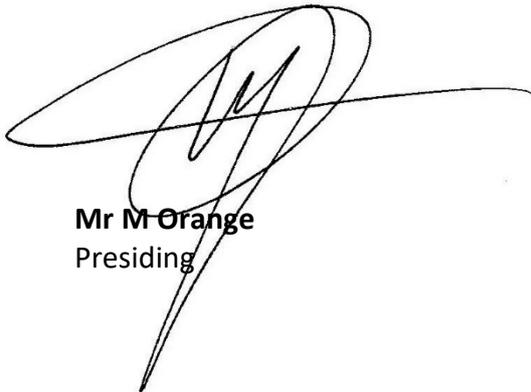
[67] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **26 January 2022**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions 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.

[68] In calling for submissions on penalty, costs and mitigation, the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 6th day of January 2022.



Mr M Orange
Presiding

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 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.*