

Before the Building Practitioners Board

	BPB Complaint No. 26909
Licensed Building Practitioner:	Richard Handley Brown (the Respondent)
Licence Number:	BP 109072
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Type:	On the Papers
Hearing and Decision Date:	23 April 2026

Board Members Present:

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

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 \$1,100. A record of the disciplinary offending will be recorded on the Public Register for three years.

Contents

Summary	2
The Charges	2
Procedure	3
Background	3
Failure to Provide a Record of Work	3
Did the Respondent carry out or supervise restricted building work.....	3
Was there a good reason	4
Board’s Decision	4
Penalty, Costs and Publication	4
Penalty	4
Costs.....	5
Publication	6
Section 318 Order	7
Submissions on Penalty, Costs and Publication	7
Right of Appeal	7

Summary

[1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,000 and ordered to pay costs of \$1,100. The fine was reduced from \$1,500 on the basis that the Respondent has now provided a record of work, and the costs were reduced on the basis that the matter was dealt with on the papers. The disciplinary finding will be recorded on the public Register for a period of three years.

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 investigate² were that the Respondent may, in relation to building work at [OMITTED] 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)

¹ Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

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.

Procedure

- [4] The Board issued a Notice of Proceedings, dated 16 February 2026. The Respondent submitted further evidence on reviewing the notice. The Board after considering the Respondent's submission, issued a revised Notice of Proceeding. The Respondent then asked that the matter be dealt with on the papers on the basis that he now accepted that he had committed the alleged disciplinary offence. The Board granted the request.

Background

- [5] A complaint was made about the Respondent's failure to provide a record of work. He responded, stating that he had not carried out or supervised the restricted building work complained about. He named his employee, [OMITTED], as the person who had carried out or supervised the restricted building work. As a result of that statement, the Board inquired into [OMITTED] involvement and ascertained that he had not held a Licensed Building Practitioner (LBP) licence since 30 March 2021. As such, he could not have carried out or supervised any restricted building work. The inquiry into him was discontinued, and the investigation into the Respondent proceeded.

Failure to Provide a Record of Work

- [6] 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.³
- [7] 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 work⁴ unless there is a good reason for it not to be provided.⁵

Did the Respondent carry out or supervise restricted building work

- [8] The Respondent's company, Henry Brown and Company Limited, contracted to carry out alterations to a residential dwelling under a building consent. The building work included work on the primary structure and the external moisture management system of the residential dwelling, both of which are forms of restricted building work.⁶
- [9] The on-site construction was undertaken by staff of Henry Brown and Company, none of whom were LBPs. It is an offence for persons other than LBPs to carry out or

³ Section 88(1) of the Act.

⁴ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁵ Section 317(1)(da)(ii) of the Act

⁶ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

supervise restricted building work or to engage unlicensed persons to carry or supervise restricted building work.⁷ The Respondent, as the only LBP involved in the project, was, by default, the supervising LBP.

- [10] The Respondent, upon being informed that he was the only LBP involved in the project, accepted his involvement and provided a record of work dated 18 February 2026 to the Investigator on the same date for the restricted building work completed in or about June 2022. The late provision has been taken into consideration as a mitigating factor by the board and its penalty determinations.

Was there a good reason

- [11] The only reason put forward for a failure to provide a record of work on completion in June 2022 was that the Respondent was under the impression that one of his staff members was an LBP and was responsible for the provision of a record of work. As the employer and main contractor, the Respondent had a duty to ensure that persons he used to complete the restricted building work were licensed. He failed in their duty, and it is to be noted that licensing records are publicly available so there was no impediment to ascertaining whether the staff were or were not licensed. Given those factors, the Board finds that there was no good reason for the failure to provide a record of work.

Board's Decision

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

Penalty, Costs and Publication

- [13] 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.
- [14] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [15] 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

⁷ Section 85 and 86 of the Building At 2004

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 the Respondent and 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

[16] 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 cases¹⁵ 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 penalty¹⁷ that is consistent with other penalties imposed by the Board for comparable offending.¹⁸

[17] 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.

[18] The Respondent has, as a result of a complaint and the Board's investigations, now provided a record of work. The late provision has been taken into account as a mitigating factor, and the penalty has been reduced by \$500 to \$1,000.

Costs

[19] 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.¹⁹

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

- [20] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.²⁰ The starting point can then be adjusted up or down with regard to the particular circumstances of each case.²¹
- [21] 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 and was determined by way of an on-paper process.
- [22] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,100 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple on-the-papers process. It is significantly less than 50% of the actual costs.

Publication

- [23] 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,²² 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.
- [24] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²³ 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.²⁴
- [25] 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.

²⁰ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

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.

²² Refer sections 298, 299 and 301 of the Act

²³ Section 14 of the Act

²⁴ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[26] 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 \$1,100 (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.

[27] 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

[28] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Wednesday 3 June 2026**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 12th day of May 2026.



Mr M Orange
Presiding Member

ⁱ **Section 318 of the Act**

(1) *In any case to which section 317 applies, the Board may*

(a) *do both of the following things:*

-
- (i) *cancel the person’s licensing, and direct the Registrar to remove the person’s name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person’s licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person’s licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
 - (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
 - (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
 - (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.*