

Before the Building Practitioners Board

	BPB Complaint No. CB25173
Licensed Building Practitioner:	Robert Sangster (the Respondent)
Licence Number:	BP 110562
Licence(s) Held:	Carpentry

Penalty Decision of the Board under section 318 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	Blenheim
Hearing Type:	On the Papers
Hearing Date:	16 October 2019
Substantive Decision Date:	19 December 2019
Penalty Decision Date:	22 January 2020
Board Members Present:	
	Richard Merrifield, LBP, Carpentry and Site AOP 2 (Presiding)
	David Fabish, LBP, Carpentry and Site AOP 2
	Robin Dunlop, Retired Professional Engineer
	Rob Shao, LBP, Carpentry and Site AOP 1

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.

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Introduction

- [1] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had 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).
- [2] 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.
- [3] In its substantive decision the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [4] On 17 January 2020, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board's initial view was that a fine of \$1,000 was the appropriate penalty for the disciplinary offence. A reduction of \$500 was allowed on the basis of mitigating circumstances noted in the documentation before the Board.
- [6] The Respondent's submissions focused on the Board's findings. The Board, in calling for submissions on penalty, was not granting the Respondent an opportunity to reargue his case. Notwithstanding the Board notes the Respondent is seeking further clarification and, for that reason, it will deal with the Respondent's questions as regards its decision and findings.
- [7] The Respondent appears not to have a clear understanding of his obligations as regards records of work. It is recommended that the Respondent consult the LBP handbook at <https://www.lbp.govt.nz/assets/documents/lbp-handbook.pdf>.

- [8] The specific matters raised by the Respondent were with regard to the definition of completion. At times, as a result of commercial disputes or other intervening matters the full scope of intended restricted building work cannot be completed. In such circumstances, where it is or should be apparent to a licensed building practitioner, that they will not or cannot return to complete any further restricted building work then “completion” is deemed to have occurred and a record of work must then be provided.
- [9] It must also be borne in mind that a record of work is not a statement as to the quality or compliance of the restricted building work. It is simply a statement of who did or supervised what in the way of restricted building work. There can be multiple records of work for multiple licensed persons. Moreover, those records of work can capture not only what has been done but what has not been done by the licensed building practitioner. In this respect by providing adequate detail within the record of work licensed building practitioners can afford themselves a degree of protection against future liability by limiting the record to only that which they have carried out.
- [10] As was noted in the Board’s Substantive Decision the requirement to provide a record of work is not set aside by commercial or other disputes. It is a statutory document and it must be provided on completion irrespective of other matters. It is also unaffected by the timing of a code compliance certificate application. It is not relevant that a code compliance certificate has not been applied for. The requirement to provide is on completion as defined above, not on the application for a code compliance certificate.
- [11] Turning to penalty considerations the Respondent did not put forward any new mitigating circumstances. As such the Board confirms its original penalty decision.

Costs

- [12] The Board’s initial view was that \$500 in costs was appropriate. This was a reduced amount which was set on the basis that the matter was dealt with on the papers. It remains an appropriate amount.

Publication of Name

- [13] The Board’s initial view was there were no good reasons to further publish the matter. This remains the case.

Section 318 Order

- [14] 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 penalty of \$1,000.
Costs:	Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (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)(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, except for the note in the Register and the Respondent being named in this decision.

- [15] 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

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

Signed and dated this 22nd day of January 2020



Richard Merrifield
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 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.*