

Before the Building Practitioners Board

	BPB Complaint No. 26496
Licensed Building Practitioner:	Tristan Sanders (the Respondent)
Licence Number:	BP 106810
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 Location	By audio-visual link
Hearing Type:	In person
Hearing Date:	5 February 2025
Decision Date:	21 February 2025
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
	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 not** committed a disciplinary offence.

Contents

Summary	2
The Charges	2
Evidence	3
Failure to Provide a Record of Work	3
Did the Respondent carry out or supervise restricted building work.....	3
Was the restricted building work complete	3
Has the Respondent provided a record of work on completion	4
Board's Conclusion and Reasoning	5

Summary

- [1] The Board was investigating whether the respondent had failed to provide a record of work on the completion of restricted building work. It decided that the Respondent's record of work had been provided within a reasonable period of time from completion. It made that finding because the evidence established that restricted building work continued until late January 2024, and a record of work was then provided in March 2024.

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 charges the Board resolved to further investigate² were 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.
- [4] The Board³ initially dealt with the complaint by way of a Draft Decision. The Respondent disputed the findings and submitted that his record of work was 24 hours late.

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.

³ The Board is a statutory body established under section 341 of the Act.³ Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed

Evidence

- [5] 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 which allow it to receive evidence that may not be admissible in a court of law.

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 on completion of their restricted building work.⁵
- [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 territorial authority on completion of restricted building work⁶ unless there is a good reason for it not to be provided.⁷

Did the Respondent carry out or supervise restricted building work

- [8] The Respondent was engaged to carry out or supervise building work on two blocks of townhouses (Block 2 and Block 4). His work included building work on the primary structure and the external moisture management systems of a residential dwelling, both of which are types of restricted building work.⁸

Was the restricted building work complete

- [9] The information provided to the Board prior to issuing a Draft Decision indicated that the Respondent's restricted building work came to an end on or about 30 November 2023, when his contract for services was brought to an end.
- [10] Further evidence about when completion occurred was received at the hearing. The Board also received documentary evidence after the hearing that corroborated the evidence received.
- [11] The new evidence was that whilst the contract for services was brought to an end on 30 November 2023 because of a dispute with the main contractor, the Respondent's company was re-engaged under an assignment provision and that further building work, including restricted building work on the cladding, took place thereafter. The Respondent's evidence was that work continued through until February 2024.
- [12] The post-hearing documentation included confirmation of the re-engagement to achieve "practical completion", text correspondence dated 14 December 2023 and 23 January 2024 querying the completion of cladding in preparation for an

building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

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

⁵ Section 88(1) of the Act.

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

⁸ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

inspection and photographs taken on 24 and 25 January 2024 showing ladders and scaffolding in and around the cladding. The Respondent submitted that the photographs were taken when staff were applying silicone to weatherboards.

Has the Respondent provided a record of work on completion

- [13] The Respondent provided a record of work for Block 2 on or soon after completion. The allegation was that he did not provide one for Block 4 in a timely manner.
- [14] A complaint was made about the non-provision of a record of work for Block 4 on 15 March 2024. In response to the complaint, the Respondent stated that he had provided a record of work on 19 March 2024, which was after the date on which the complaint was made.
- [15] A copy of the Building Consent file was obtained from the Council, which confirmed that a record of work had been received from the Respondent. A copy provided showed that it was stamped as having been received on 20 March 2024.
- [16] The question for the Board is when completion occurred and, based on that date, was the record of work provided within a reasonable period of time thereafter?
- [17] Based on the evidence received, the Board accepts that restricted building work (work on the external moisture management system) was continuing until at least 25 January 2025. The Respondent stated that work had continued through into February but did not provide evidence to substantiate that claim.
- [18] Based on a late January 2025 completion date, the Board has decided that the record of work was provided (by a very narrow margin) within a reasonable period of time of completion.
- [19] The Board has made its decision because a literal interpretation of “on completion” cannot be applied because it would be impracticable. Section 88(1) does not provide any time time frames and Parliament chose not to use phrases such as “immediately on completion” or “as soon as reasonably practicable”. Given this and taking into consideration the requirement to give effect to the purpose of Parliament,⁹ the Board considers the use of the words “on completion” to denote a reasonable time thereafter.

⁹ Section 5 of the Legislation Act 2019

Board's Conclusion and Reasoning

- [20] The Board has 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 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) (s 317(1)(da)(ii) of the Act).
- [21] The Board recommends that, in the future, the Respondent provide his work records without delay.
- [22] The Board would also recommend that when responding to complaints, the Respondent provides a full detailed account together with supporting evidence. If he had done so in this instance, the hearing may not have been needed.

Signed and dated this 11 day of March 2025

A handwritten signature in black ink, appearing to be 'M Orange', written in a cursive style.

Mr M Orange
Presiding Member