

Before the Building Practitioners Board

	BPB Complaint No. CB26512
Licensed Building Practitioner:	Dean Corbett-Pearson (the Respondent)
Licence Number:	BP137351
Licence(s) Held:	Roofing – Profiled metal Roofing and/or Wall Cladding

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	Christchurch
Hearing Type:	In Person
Hearing and Decision Date:	26 November 2024
Board Members Present:	
	M Orange, Chair, Barrister (Presiding)
	Mr G Anderson, LBP, Carpentry and Site AoP 2
	Mr P Thompson, LBP, Carpentry and Site AoP 3, 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 not** committed a disciplinary offence.

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Summary

- [1] The Respondent carried out roofing work that required a building consent without ensuring one was in place before he commenced. The Board decided that the Respondent had conducted himself in a negligent manner but that the conduct was not serious enough to warrant a disciplinary outcome.

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], Christchurch, have carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, he may have failed to ensure an approved building consent was in place before building work was commenced.

Consolidation

- [4] The Board may, under Regulation 13, consolidate two or more complaints into one hearing but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [5] The Board sought agreement for consolidation of this matter with complaint number CB[Omitted]. The consent of all those involved was forthcoming. The two matters were consolidated.

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.

Evidence

- [6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. 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.
- [7] The roofing work under investigation related to alterations and additions to an existing dwelling being undertaken by the owner, an experienced developer and qualified builder, in association with an LBP Carpenter (the subject of complaint number CB[Omitted]), which was made by the Christchurch City Council). As part of the alterations and additions, a new Eurotray Angle Seam roof was installed on the main dwelling under the Respondent's supervision. There were no issues with the quality of the roofing work completed. The issue was whether a building consent was in place for the work prior to it being completed.
- [8] The Respondent accepted that the roof had been installed without a building consent. He stated the requirement for a building consent was overlooked. He also noted that back then, little, if any, reference was made to building consents if they had been issued but that he had learned from the complaint and now is more diligent in checking for building consents and ensuring that work is carried out in accordance with them when they building consent has been issued. He regretted his actions and stated he had learnt from the matter.

Negligence

- [9] As noted, the Board's considerations related to a possible failure to ensure a building consent was in place prior to building work being carried out.
- [10] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.⁴ The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken⁵ and that the consented work is then assessed against the consent issued through scheduled inspections.⁶ In *Tan v Auckland Council*⁷ the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ Refer sections 40, 41 and 42A of the Act.

⁵ Section 49 of the Act.

⁶ Section 222 of the Act.

⁷ [2015] NZHC 3299 [18 December 2015]

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

- [11] The Respondent falls into the category of a person who was in the best position to ensure unconsented work did not occur. As such, he had a duty to assess whether a building consent was required prior to the building work being undertaken. The question then becomes, was the Respondent negligent for failing to do so?
- [12] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁸ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁹ test of negligence.¹⁰ A threshold test also applies. It is not enough that the Respondent has been negligent. The Board must also decide if the conduct fell seriously short of expected standards. If it does not, then a disciplinary finding cannot be made.
- [13] It was on the basis of the test for seriousness that the Board decided that the Respondent had not committed a disciplinary offence. The test was described by Justice Gendall in *Collie v Nursing Council of New Zealand*¹¹ as:

[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.

- [14] In *Pillai v Messiter (No 2)*,¹² an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, it was described as:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [15] In this matter, the Board decided that there had not been a deliberate departure. The Respondent was, by comparison to the other LBP investigated by the Board, remote from the decisions made to carry out the building work without a building consent. Further, in the circumstances under which his work was undertaken and the type of work completed (roofing), there were not the same or as many reasons to be on notice that a consent was required. For those reasons, the Board has

⁸ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 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.

⁹ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

¹⁰ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹¹ [2001] NZAR 74

¹² (1989) 16 NSWLR 197 (CA) at 200

decided that whilst the Respondent conducted himself in a negligent manner, it will not make a disciplinary finding.

Board's Decision

- [16] The Board has decided that the Respondent has not committed a disciplinary offence.
- [17] The Respondent is, however, cautioned regarding future conduct. Whilst he stated he has learned from the Board's investigations, the Board recommends that he familiarise himself with his statutory obligations as an LBP and that, prior to him undertaking any building work, appropriate enquiries are made to ascertain whether a consent is required and, if one has been issued, that it is studied to ensure compliance will be achieved.

Signed and dated this 8th day of January 2025.



Mr M Orange
Presiding Member