

Before the Building Practitioners Board

	BPB Complaint No. CB26421
Licensed Building Practitioner:	Philip John Stirling (the Respondent)
Licence Number:	BP104340
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	by audio-visual link
Hearing Type:	In Person
Hearing Date:	27 August 2024
Substantive Decision Date:	29 August 2024
Penalty Decision Date:	2 December 2024

Board Members:

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** committed disciplinary offences under sections 317(1)(b), (d) and (g) of the Act.

The Respondent **has not** committed disciplinary offences under sections 317(1)(da)(ii) of the Act.

The Respondent is censured and fined \$2,000 and ordered to pay costs of \$2,150. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board’s Penalty Decision

- [1] The Board’s indicative penalty was a censure and a fine of \$2,000, and its indicative costs order was \$2,150.
- [2] A record of the disciplinary offending will be recorded on the public Register for a period of three years.

The Charges

- [3] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had breached sections 317(1)(b), (d) and (g) of the Act.
- [4] 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.
- [5] In its substantive decision, the Board set out its indicative position regarding penalty, costs, and publication and invited the Respondent to make written submissions on those matters.
- [6] Since the hearing, the Respondent has engaged legal counsel who has made submissions on his behalf. The Board has considered those submissions, and has made the following decisions.

Penalty

- [7] The Board’s initial view was that a censure for the Code of Ethics breaches and a fine of \$2,000 for the other breaches was an appropriate penalty.
- [8] Counsel’s submissions noted that the Respondent took issue with aspects of the Board’s factual findings. When inviting submissions on penalty, the Board is not seeking a review of its substantive findings. Should the Respondent disagree with the Board’s findings, he is reminded of his right to appeal as set out below.
- [9] Turning to the submissions made on penalty, Counsel submits that the transgressions were minor and did not merit a significant penalty. She also notes that there was no loss to the Complainant.

- [10] Dealing first with the submission regarding the Complainant, the disciplinary regime exists to maintain standards and to deter practitioners from unacceptable conduct. Loss to a complainant need not have occurred, but it can be a mitigating or aggravating factor. In this matter, the Board had not taken the Complainant's position into consideration when determining the appropriate penalty. As such, no adjustments will be made to account for it when determining the final penalty.
- [11] Turning to the submission that the disciplinary offending was minimal, the submission is not accepted. The fine imposed is consistent with other penalties imposed by the Board for conduct of this nature in the transgressions under sections 317(1)(b) and (d) of the Act warranted more than just a censure.
- [12] No new mitigating factors were brought to the Board's attention.
- [13] Given the above factors, the Board has decided to affirm its indicative penalty.

Costs

- [14] The Board's initial view was that \$2,150 in costs was appropriate. No submissions were received on costs, and the amount is affirmed.

Publication of Name

- [15] The Board's initial view was there were no good reasons to further publish the matter. That remains the case.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured for the breach of section 317(1)(g) of the Act; and

Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is to pay a fine of \$2,000 for the breaches of section 317(1)(b) and (d) of the Act.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,150 (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, the Respondent will be named in this decision, which will be published on the Board's website.

- [17] 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

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

Signed and dated this 10th day of January 2025.



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 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.*