

Summary of Board decision on Penalty, Costs and Publication

On 13 July 2021, the Board resolved that there were grounds for disciplining two architects for multiple breaches of Rule 49 of the Registered Architects Rules 2006 and section 25(1)(c) of the Registered Architects Act 2005.

The Board's decision followed a complaint about the architects work on a residential project, received on 2 July 2020 and a subsequent investigation that was completed by the Investigating Panel (IP) on 2 July 2021.

The IP investigated four broad complaints, totalling 10 alleged failings:

1. Design work undertaken without contract
2. Design and Budget (four alleged failings)
3. Construction (three alleged failings)
4. Post Construction – practical completion and defects certification (two alleged failings)

The IP recommended and the Board found that there were grounds for discipline in 8 of the 10 alleged failings that were investigated.

The Architects elected not to have a disciplinary hearing. Therefore the Board was asked to make a determination on penalty, costs, and publication. The decision on penalty and publication was made at the 7 September Board meeting and a decision on costs was made at the 5 October 2021 meeting following a supplementary submission from counsel on costs.

Decision – Penalty, Cost and Publication

After careful consideration of the IP Report, submissions from both parties and directions of its Legal Assessor, the Board made the following orders under section 26 of the Registered Architects Act 2005:

1. That the Architect are to be censured under section 26(1)(c).
2. That the Architects practice be subject to the following conditions under section 26(1)(d)
 - a. That upon application and before being granted an Annual Certificate of Registration (ACR) both Architects are to undergo a face-to-face competence review. As part of such review the Evaluation Panel is to be provided with a copy of this decision.
 - b. That 12 months after being granted an ACR, both Architects are to undergo a further face-to-face competence review. As part of that review, the evaluation panel is to be provided with a copy of this decision and the report of the first face-to-face review.
3. That the Architects are to pay, jointly and severally, 60 per cent of the costs and expenses of, and incidental to, the inquiry by the Board under section 26(4).
4. That a summary of the IP Report and the Board decision be published on the NZRAB website without reference to identifying details, under section 25(5)(b).
5. The Board noted that in accordance with section 21(1)(a)(iii) of the Act, it is required to record on the Register, in respect to each Architect, the penalties ordered under sections 26(1)(c) and 26(1)(d) of the Act for a period of three years.

Reasons

The reasons for the Board's decision are:

- Although the failings of the Architects were serious, they could not be described as the most serious and did not extend into matters of integrity, dishonesty, or maliciousness. Consequently, the Board did not feel the required threshold was reached for cancellation of registration.
- Noting both Architects are currently in voluntary suspension, the Board was not able to consider suspension as a penalty option.
- A combination of censure and conditions on both Architects' practice, requiring them to undertake two face-to-face competence reviews; one before being granted an Annual Certificate of Registration and a subsequent review after a period of 12 months, is commensurate with the gravity of the failings on this project. It signals the Board's acceptance of the IP's recommendation that a significant penalty is warranted, and the impact that the multiple failings have had on the Complainant. Further, and importantly, this combination of penalties serves best to protect the public.
- Noting a starting point of 100% and counsel's submissions, a discount on the percentage of costs was allowed considering that:
 - The Architects could not control the way the complaints were presented, which contributed to the IP incurring additional hours in assessing the complaint and the response.
 - In choosing not to have a disciplinary hearing convened, the Architects saved the Board the time and cost involved in a disciplinary hearing and saved themselves the cost, time and mental energy/stress that would be involved in another round of evidence and submissions for a Disciplinary Hearing. Nor did they wish to put the Complainant through the same.
 - The Architects acknowledged that they could have managed the interactions with the client differently.
 - In considering the final percentage, the Board noted Counsel's supplementary submission on the fairness of costs, and that they may have responded to the complaint differently if they were aware that they may incur 100% of the costs of the investigation.
- A summary report, without identifying details is the most appropriate channel to educate the profession. Public interest and public safety would not be served further by publicising the architects' names, noting there is already mandatory recording of the penalty on the Register.