

Before the Building Practitioners Board

	BPB Complaint No. CB24900
Licensed Building Practitioner:	Matthew Joy (the Respondent)
Licence Number:	BP 132323
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	Auckland
Hearing Type:	In Person
Hearing Date:	13 March 2019
Decision Date:	16 April 2019

Board Members Present:

Chris Preston (Presiding)
Mel Orange, Legal Member
David Fabish, LBP, Carpentry Site AOP 2
Robin Dunlop, Retired Professional Engineer

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.

Board Decision:

The Respondent **has** committed disciplinary offences under sections 317(1)(b), 317(1)(d) and 317(1)(da)(ii) of the Act.

Contents

Introduction	2
Function of Disciplinary Action	3
Service of Complaint	3
Evidence	4
Board’s Conclusion and Reasoning	7
Negligence and/or Incompetence	7
Contrary to a Building Consent	9
Record of Work.....	10
Penalty, Costs and Publication	11
Penalty	11
Costs.....	11
Publication	12
Section 318 Order	13
Submissions on Penalty, Costs and Publication	13
Right of Appeal	14

Introduction

[1] The hearing resulted from a complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
- (c) 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).

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

Function of Disciplinary Action

- [2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.
- [3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*⁴ Collins J. noted that:
- “... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*
- [4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

Service of Complaint

- [5] The Respondent did not attend the hearing. He did not respond to the complaint.
- [6] Prior to considering the disciplinary charge the Board needs to determine whether the Respondent has been provided with notice of the complaint and with an opportunity to respond to it.
- [7] Under regulation 7(2) of the Complaints Regulations the Registrar must, when compiling the Registrar’s Report, provide a copy of the complaint to the Respondent. Similarly under regulation 12 if the complaint is to proceed to a hearing the Board must give notice of the hearing to the Respondent.
- [8] The Register of Licensed Building Practitioners must contain certain information including under section 301(1)(d) an “address for communications under this Act”. Under section 302 the licensed building practitioner must keep their details up to date:

302 Obligation to notify Registrar of change in circumstances

- (1) *Each [person applying to become licensed], and each licensed building practitioner, must give written notice to the Registrar of any change in circumstances within 10 working days after the change.*
- (2) *Change of circumstances—*

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

- (a) means any change in the information that the person has provided to the Registrar under this subpart; and
- (b) includes any change that may be prescribed (if any).

[9] As the Respondent has not provided any updated details the address to be used for communications with him is that contained in the Register.

[10] The Act also provides for the service of notices in section 394. It provides that:

394 Service of notices

- (1) Any notice or other document required to be served on, or given to, any person under this Act is sufficiently served if it is—
 - (a) delivered personally to the person; or
 - (b) delivered to the person at the person's usual or last known place of residence or business; or
 - (c) sent by fax or email to the person's fax number or email address; or
 - (d) posted in a letter addressed to the person at the person's usual or last known place of residence or business.
- (5) A notice or other document sent by post to a person in accordance with subsection [\(1\)\(d\)](#) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.

[11] Given the above provisions the Board finds that the required notices under the Regulations have been provided to the Respondent.

[12] The Board also notes that extensive additional efforts were made to locate the Respondent and bring the matter to his attention and that the purposes of the disciplinary provisions in the Act would be defeated if licensed building practitioners were able to avoid complaints by not maintaining up to date contact details as per the requirements of the Act.

Evidence

[13] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.

[14] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [15] The Complainants attended the hearing and gave evidence.
- [16] As such the Board finds that it is appropriate that it considers the complaint.
- [17] The Respondent was engaged to carry out major alterations to the Complainants' house to convert a split-level dwelling back into one house. The Respondent was responsible for demolishing the existing walls and roof and installing new trusses to complete an extension to the existing house and building a new layout of lounge, dining, kitchen, master bedroom, toilet, laundry and ensuite.
- [18] The Complainants stated the building work started well but soon went off track. They stated the Respondent had two non-qualified and inexperienced staff members on site and that when the Respondent was not present, they were unable to carry out anything other than minor tasks. After approximately one month the Respondent's attendance on site became less and less frequent.
- [19] The Complainants noted that there were two failed Council inspections for non-compliance and an Inspection (dated 9 May 2018) that noted incorrectly installed sills and head flashings and windows that were not installed according to the plans. The Complainant had to engage another builder to install them correctly. A final Inspection (also on 9 May 2018) recorded that an on-site minor variation was required.
- [20] The Complainants also complained that the Respondent had failed to provide a record of work and producer statements upon completion of his part of the building project which was completed on 10 October 2017. The Board was provided with multiple email requests to the Respondent requesting documentation.
- [21] The Board obtained the Council files. A Site Meeting Checklist when a new builder took over noted:

Bracing in hallway, brace panel required for ensuite to be fixed on bedroom side of wall. Window head flashings not as per detail.

ISSUES:

- 1) *Hallway brace- shows BL but is std gib. Could be increased to 1.2m which would enable handi-bracs to connect with joists. Remaining section to doorway is currently standard gib- just needs additional screws to pattern, to create GS1 brace.*
- 2) *Bed.1 Ensuite: Brace shown on shower side of wall. This needs to be moved to the bedroom side of wall-could be increased to 1.5m (check plate fixings).*

Exterior wall in ensuite OK to line.

- 3) *East wall: Head flashings on direct fixed W/ Boards not as per detail.*

- 4) *Cill flashings on same wall fitted incorrectly- 5mm gap required between cill & flashing.*
- 5) *Three vent vowels require head flashings & sealant.*
- 6) *Original builder to provide photos of gib braces in kitchen corner, and ROW to cover work done, prior to termination.*

Refer to designer regarding the above items, with the possibility of including some of them on a MINOR VARIATION.

[22] Building inspection records also noted:

Minor variation may be required.

Minor variation required for change in bathroom layout.

Minor variation required for floor plan and bracing, changes to head flashing and sill flashings. Change from tiled shower to acrylic.

Waterproofing product changed from ARDEX WPM 001 to Mapei Mapegum WPS.

[23] The Council records included photographs of the flashings.



[24] The Council records did not contain a record of work from the Respondent.

[25] The Complainants stated that the Designer for the project would not issue a minor variation for the way in which the windows were installed and that the builder who

completed the project removed them and reinstalled them to the requirements noted in the building consent.

- [26] In addition to matters raised in the Council files, the Complainants stated that the new kitchen wall was 12-13mm out of square which caused issues with the kitchen install, that the Respondent took up existing wooden flooring in the kitchen without consent and when it was not required. They also alleged he cut an air vent hole in the roof that was not required. The Complainants noted that the Respondent had not paid subtrades and was not willing to deal with issues or to engage with them once the contract was cancelled.

Board's Conclusion and Reasoning

[27] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
- (c) 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)

and should be disciplined.

[28] The reasons for the Board's decisions follow.

Negligence and/or Incompetence

[29] Negligence and incompetence are not the same. In *Beattie v Far North Council*⁶ Judge McElrea noted:

[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.

[30] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

- [31] Incompetence is a lack of ability, skill or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as “*a demonstrated lack of the reasonably expected ability or skill level*”. In *Ali v Kumar and Others*⁹ it was stated as “*an inability to do the job*”.
- [32] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [33] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purpose of the Act¹¹. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹².
- [34] The Board notes that the purposes of the Act are:

3 Purposes

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
- (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

- [35] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code¹³ and be carried out in accordance with a building

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹² *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹³ Section 17 of the Building Act 2004

consent¹⁴. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.

- [36] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁵ the Court's noted, as regards the threshold for disciplinary matters, that:

[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.

- [37] The Council records that were before the Board showed that building work had been carried out in a manner that did not meet compliance requirements. The photograph above shows the install of a flashing in a manner that clearly contravenes Building Code requirements. The windows had to be removed and reinstalled. The inspection records and site meeting notes record multiple Building Code contraventions.
- [38] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Contrary to a Building Consent

- [39] Under section 40 of the Act all building work must be carried out in accordance with the building consent issued. This ensures that there is independent verification that the Building Code has been complied with and the building work will meet any required performance criteria. A failure to adhere to a building consent is also an offence under section 40.
- [40] In *Tan v Auckland Council*¹⁶ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.

- [41] The Council records that were before the Board also provided clear evidence that building work had been carried out in a manner was not in accordance with the building consent.
- [42] There was also evidence in the records that multiple minor variations that were required as a result of the building consent not being adhered to.

¹⁴ Section 40(1) of the Building Act 2004

¹⁵ [2001] NZAR 74

¹⁶ [2015] NZHC 3299 [18 December 2015]

- [43] On this basis the Board finds that the Respondent has carried out building work in a manner that was contrary to the building consent.

Record of Work

- [44] 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 work¹⁷.
- [45] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [46] The Board discussed issues with regard to records of work in its decision C2-01170¹⁸ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [47] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [48] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”.
- [49] In most situations issues with the provision of a record of work do not arise. The work progresses and records of work are provided in a timely fashion. Completion occurred in October 2017. A record of work was not provided. On this basis the Board finds that the record of work was not provided on completion as required and the disciplinary offence has been committed.
- [50] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits but the threshold for a good reason is high. No good reasons were advanced.

¹⁷ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹⁸ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

Penalty, Costs and Publication

- [51] 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.
- [52] The matter was dealt with at a hearing. Information relevant to penalty, costs and publication was received. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [53] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁹ commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [54] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*²⁰ the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [55] The Respondent's negligence was significant. Moreover, he did not engage with the Complainants once his failings were exposed. He has not engaged in this process. These are aggravating factors. Based on the above and these factors the Board's penalty decision is that the Respondent pay a fine of \$2,500.

Costs

- [56] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [57] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and

¹⁹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁰ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²¹.

- [58] In *Collie v Nursing Council of New Zealand*²² where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

- [59] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$2,000 toward the costs of and incidental to the Board's inquiry.

Publication

- [60] As a consequence of its decision the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act²³. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

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.

- [61] As a general principle such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [62] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁴. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁵. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁶. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁷.
- [63] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁸. It is,

²¹ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²² [2001] NZAR 74

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

²⁵ Refer sections 200 and 202 of the Criminal Procedure Act

²⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁷ *ibid*

²⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[64] Based on the above the Board will not order further publication.

Section 318 Order

[65] 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 fine of \$2,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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.

[66] 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.

Submissions on Penalty, Costs and Publication

[67] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **10 May 2019**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received then this decision will become final. If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

[68] In calling for submissions on penalty, costs and mitigation the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and and/or its decision that the Respondent has committed a disciplinary offence the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 16th day of April 2019



Chris Preston
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.*