

**In the Matter of The Chartered
Professional Engineers Act 2002**

**And in the matter of an appeal to the
Chartered Professional Engineers
Council**

Between

**Mr and Mrs S
Appellant**

And

**Mr R
Respondent**

**Decision of the Chartered Professional Engineers Council
Dated 12 December 2014**

COMPLAINT

1. On 4 February 2014 Mr & Mrs S made a complaint against Mr R CPEng MIPENZ Int PE (NZ) of Napier.
2. Mr and Mrs S's complaint was that Mr R, who was inspecting their property after the Christchurch earthquakes, had been negligent. It is alleged that:
 - (a) Mr R did not remove the cladding from a masonry wall in the garage in order to inspect this when the other two brick walls in the garage, which were not clad, showed damage.
 - (b) Mr R was adamant that the third wall should remain but did not present any report to substantiate this.
 - (c) When another Engineer's report stated that the wall had suffered earthquake damage Mr R ignored this report and did not change his opinion on the wall remaining.

APPLICABLE JURISDICTION

3. Mr R was registered as CPEng and Int PE in December 2003 and his registration is current. The complaint was received on 4th February 2014 and refers to matters arising in 2011/12/13.
4. Mr R's practice area is described in the Register as "Design and Observation of building structures, earthworks and subdivision development; inspection and reinstatement of earthquake damaged buildings".
5. The parties agreed to this matter being determined on the papers before us.

BACKGROUND TO THE MATTER

6. On 28 November 2011 Mr R inspected the Mr and Mrs S's property at the request of Mr Robb who was at that time Fletcher EQR supervisor.
7. Mr R reported to him on the inspection (both Mr R and Mr Robb did the inspection) on 9 December 2011.
8. As part of the remedial works proposed in that report the South and West walls of the garage were to be demolished and new timber framed walls were to be constructed.
9. The report was prepared for the Earthquake Commission and addressed to Mr Robb (dated 9 December 2011).
10. Fletcher EQR engaged Chaplin Cooks Architects ltd to prepare remedial drawings for construction.
11. On 27 June 2012 the remedial drawings were produced at a meeting between Mr Robb and Mr R. These were issued for construction and dated 18 May 2012.
12. Mr R noted they were not in accordance with his report (of 9 December 2011) and that they appeared to exceed the requirements in the building code approved documents. He issued a memo dated 13 July 2012 to that effect. It is noted that the memo references the requirements of the south and west walls.
13. It is clear that the purpose of this memo was to outline to EQR Mr R's view of the extent of the betterment. We anticipate that this was an obligation placed on Mr R by his terms of engagement and follows the general principle that a party suffering damage is only entitled to recover the cost incurred as a consequence of that damage and no more.
14. The meeting resulted in an exchange of e-mails over the extent of the repairs and a further meeting on 8 October 2012 with Mr Robb and Mr

Crooks. At that meeting there was also a telephone discussion with Mr Warren Lewis of Lewis and Barrow.

15. The end result was the issuing of a memo (GWR-556 dated 16 November 2012) recommending that the work be carried out in accordance with the plans.
16. The report states that Mr R had not seen any evidence of recent earthquake damage to the concrete block work wall which was clad, but, if there was any evidence of damage seen after the brick walls had been removed, there may be grounds for reviewing the condition of the wall and consideration given to the need to remove it. The plans had were annotated to this effect.
17. Mr R also adds a paragraph in that memo to Mr Robb and Mr & Mrs S have raised a complaint about this:

“However, having regard for the issues raised, reviewed and discussed relating to this project and the demonstrated understandings of the relevant legislation, I recommend no further work be offered to these parties without good cause.”
18. Repairs were initiated when on 23 August 2013 Mr R attended a site meeting with Mr Robb, and the builders. The wall linings had now been stripped away. Mr R inspected the wall, (as did the builders) and concluded that the blockwork wall should remain in place.
19. Further correspondence took place between Lewis & Barrow, architects and Mr R through Mr Robb regarding the conflicting views over the concrete blockwork wall that had previously been clad. It was evident that the view of Lewis and Barrow was that the wall should be removed and of note was a one page site written report by Justin Freeman dated 4 September 2013:

1. *The wall was damaged.*

2. *The wall would be too expensive to repair. It would be cheaper to build a stud wall.*
 3. *The repair design of bracing has been done to the plans and there is only enough bracing for the walls as drawn. I.e. This walls bracing being light timber framed walls.*
 4. *To leave the wall in place would require a redesign of the bracing, an amendment to the building consent, extra bracing especially along the east wall and strengthening of the block wall to restore the tension, especially of the mid height mortar joints in a way that is sound and sure.*
20. Mr & Mrs S raised their concerns with the lack of progress on site with the Earthquake Recovery, local MPs and the earthquake commissioner.
21. On 10th September 2013 Mr R instructed the blockwork wall to be removed and replaced with a timber frame and lined wall.

ESSENCE OF THE COMPLAINT

22. The essence of the complaint was that:
- (a) Mr R did not remove the cladding from the block wall in his first inspection and did not proceed quickly enough to ensure its demolition and replacement.
 - (b) The plans prepared by the architects had the option of the block wall being removed with a requirement that this be checked on site by the engineer.
 - (c) Lewis and Barrow were of the view that the block work wall should be removed with the main reasons of costs, design work done to date, damage to the wall and costs of repair.
 - (d) Mr R held the view that the block wall did not need to be removed even on inspection when the lining was removed.
 - (e) Mr R's comments on the parties were disparaging.

DISCUSSION

23. The panel are of the view that the initial inspection did not necessarily require removal of the cladding. Any damage to the blockwork wall would most likely be shown in damage to the lining.
24. When the blockwork lining was removed Mr R was still of the view that the blockwork wall was not damaged.
25. There is no technical evidence in the papers to support either view, other than the stated opinions of two engineers. It is noted that the site report of 4 September 2013 has more compelling reasons for removal based on issues of costs and rework involved than site safety. There is no evidence before us that safety was ever called into question.
26. The difference of opinion over the status of the wall has caused considerable delay and uncertainty to the repairs for Mr and Mrs S which was particularly difficult for them. The panel understands the difficulty a home owner may have when two engineers disagree over a structure as simple as a garage blockwork wall.
27. Of special concern would be the safety of the blockwork wall that was in the view of one engineer damaged and required either repair or removal. It is important to note that Lewis and Barrow have not stated in the papers that the wall was unsafe nor outlined the extent of repairs proposed for their preferred option.
28. However it is not unusual for engineers to differ in their assessment. Engineering relies in part on judgment and experience. In this case two engineers looked at the same wall and came to different conclusions.
29. The appeal panel considered the comments made by Mr R in his memo of 16 November 2012 to EQC. This memo discusses the various considerations that Mr R had in mind when considering the wall. We do not think that the content of the memo is unusual.

30. Ultimately Mr and Mrs S have had satisfactory repairs undertaken, albeit after some delay.

FINDINGS

31. The panel finds that the Registration Authority should not have dismissed the complaint under rule 57(a) being that there is no applicable ground of discipline under section 21(a) to (d).
32. The complaint, at its simplest, is that Mr R performed his services in a negligent or incompetent manner. There is clearly an applicable ground of discipline under which such a complaint can be heard.
33. However, we are entitled to come to any decision that the Registration Authority could have arrived at.
34. We should therefore consider whether, under rule 57 the complaint should be dismissed for any other reason.
35. We dismiss paragraphs (b), (c), (d), (e) and (f) which are clearly inapplicable in this case. We are particularly conscious that the matter was clearly of some concern to Mr & Mrs S and was not “trivial”.
36. Paragraph (ba) states that a complaint may be dismissed if:

“(ba) the alleged misconduct is insufficiently grave to warrant further investigation”
37. In considering this ground the Council needs to consider the facts and determine whether the low threshold has been passed so that this matter should move to an Investigating Committee.
38. Without wishing to diminish the obvious concern that Mr & Mrs S have about this matter the Council considers that there is no evidence before us that safety was ever an issue here. Mr R was discharging his obligations to his employer, and to the homeowner. There was a difference of opinion. This resulted in a design decision taking longer

than it might otherwise have. However, the fact is that these types of decisions are being taken every day by engineers. They are more in the nature of commercial issues that arise when there are differing views on who is to pay for what in these circumstances - the insurer or the homeowner. Ultimately Mr & Mrs S have had their garage repaired.

39. We are of the view that the actions taken by Mr R, if they could amount to “negligence of incompetence” (and we expressly make no finding on this) were not sufficiently grave to warrant further investigation.
40. Therefore, we determine that the complaint should be dismissed under rule 57 (ba) and so order.

OUTCOME

41. That the appeal is declined. The complaint is dismissed under rule 57(ba)

Dated this 12 Day of December 2014.

Andrew Hazelton
Principal

Roly Frost
Member (and drafter of this decision)

Jane Nees
Member and Consumer Representative