

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

Appeal 07/14

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

Between

**P
Appellant**

And

**A
Respondent**

**Decision of the Chartered Professional Engineers Council
Dated 23 January 2015**

COMPLAINT

1. On 12 May 2015 Mr P made a complaint against Mr A CPEng of Christchurch.
2. Mr A was engaged to undertake a peer review of reports on Mr P's property which had suffered from earthquake related damage.
3. Mr P alleges that Mr A had been supplied with incorrect information by his employer. Mr P pointed this out to Mr A.
4. Mr P's complaint, having pointed this out to Mr A, was that Mr A refused to answer what information he had been supplied with before undertaking his review.
5. The matter was initially dealt with by an adjudicator's decision dated 22 May 2014. That decision determined that there was no applicable ground of discipline and accordingly dismissed the complaint pursuant to Rule 57(a).
6. It is this decision that Mr P appeals from.
7. During the course of this appeal the Panel invited Mr P to clarify the focus of his complaint, and to inform the Panel what ground of discipline he considered Mr A to have breached.
8. Mr P clarified in his email dated 26 June 2014 that he considered Mr A to have been in breach of the code of ethics, and that, in particular Mr A alleged Mr P had breached his obligation to "*act honestly and with objectivity and integrity in the course of his engineering activities*".
9. The Panel received submissions from both Mr P and Mr A. Both of these were helpful to the Council. A hearing was convened by telephone which took place on 25 November 2014. The Council considered that this was the most efficient way to dispose of the matter, whilst giving the parties full opportunity to be heard. Unfortunately the hearing had to be

postponed on a number of occasions due to the unavailability of parties or Council Members.

BACKGROUND TO THE MATTER

10. Mr & Mrs P have an unsettled insurance claim on their residential property at [], Christchurch as a result of the September 2010 and February 2011 Canterbury earthquakes. The claim is against Southern Response Earthquake Services Limited (“Southern Response”).
11. Southern Response has contracted with Arrow International Limited (“Arrow”) to undertake loss adjusting and reinstatement services on their behalf.
12. Southern Response issued instructions (via Arrow) on 4 October 2012 for a geotechnical report to be undertaken on the P’s property. They engaged Geoscience Consulting (NZ) Limited (“Geoscience”) for this purpose.
13. On 29 November 2012 Geoscience produced their report consisting of Part A and Part B.
14. Mr P was not happy with the content of this report and spoke to a representative of Geoscience on the same day, 29 November 2012 requesting that they make contact with Arrow about the content. This they evidently did because on 30 November 2012 Geoscience re-issued their report having made changes to it. It again consisted of a Part A and a Part B.
15. The changes from the first version of the report to the second were not insignificant - certainly in any event, not to Mr P. The principal difference, and the one that this complaint revolves around, is that in the 29 November 2013 report Geoscience had recommended repairing the foundations of the P’s property in line with “*Section 4 and Appendix A1 of the DBH guidelines*”. This reference is omitted from the 30 November 2013 report and replaced by a recommendation for

“specifically designing foundations for a static geotechnical Ultimate Bearing Capacity of 150 kPa and embedding within the upper metre”

16. Mr & Mrs P decided to complete their own geotechnical investigation which they did through Kirk Roberts Engineering. Their report is dated 9 August 2013.
17. In December 2013 Southern Response stated that they wished to have a peer review of the Geoscience report and the Kirk Roberts Engineering report.
18. X Limited were appointed by Southern Response, via Arrow, to undertake the peer review. Mr A is employed by X and he authored the peer review entitled “[Address] - Geotechnical Review of Proposed Foundation Repair Solutions” and dated 17 February 2014.
19. Mr A’s peer review states that he had reviewed two Geoscience reports. In section 5 ‘References’ these are listed as “Geoscience 2012a” and “Geoscience 2012b”. Both are attributed with the date “30 November”.
20. It was a reasonable assumption to make that what had been reviewed from Geoscience was its report dated 30 November 2013 which consisted of parts A and B.
21. When the report was received by Mr P he emailed Mr A about it. Mr P was concerned. He considered that Mr A must have been provided with the Geoscience report of 29 November 2013 and not the report of 30 November 2013.
22. This was apparent to Mr P because in section 3.1.1 of Mr A’s report he made the following statement:

In November 2012, Geoscience, acting for Southern Response, completed two reports (Geoscience 2012a, 2012b) assessing the ground conditions and likely future earthquake performance, recommending foundation repairs be carried out in accordance with chapter 4 of DBH 2012.

23. The point being, that, as set out above, the reference to Chapter 4 of the DBH guidelines does not appear in the report of 30 November 2012, but rather in the report of 29 November 2012.
24. Mr P then emailed Mr A and referred him to a section of the 30 November 2012 report from Geoscience, which was headed “Geotechnical Recommendations” and is the section that contains the recommendation for specific design. Given this, Mr P wanted to know why there was reference in Mr A’s report of Chapter 4 of the DBH guidelines.
25. On 29 April 2014 Mr A replied by email that he had reviewed
“the two Nov 2012 Geoscience reports provided to me. The references to Chapter 4 of the MBIE 2012 guidelines are simply stating what their report says”
26. Mr P was not satisfied with that reply. He considered that Mr A must have reviewed the 29 November 2013 Geoscience report and complains that Mr A refused to answer his correspondence on the matter.
27. Mr P lodged his complaint. After the complaint was dismissed by the Adjudicator, and during the course of this appeal Mr A has clarified his position. In particular he has confirmed that he must have seen the 29 November 2013 report when conducting his own peer review. He has confirmed that by re-issuing his report and dating this 13 June 2014. In the body of the report and the reference section it refers to both the 29 November 2013 report and the 30 November 2013 report.
28. Mr P considers that Mr A should have disclosed his original instructions. In the absence of such instructions Mr P considers that Mr A’s report of 17 February 2014 is incorrect and he alleges that there has been a an ethical breach to act *honestly and with objectivity and integrity in the course of his or her engineering activities* and that this continues to occur.

29. Mr P's submissions on this deserve quoting in full¹:

35. *I believe that Mr A's late admission that he reviewed the Geoscience report dated 29 November 2012 as well as the referenced report dated 30 November 2012 is an attempt to "cover-up" this ethical breach either for his client (Arrow), his client's client's (Southern Response and Wynn Williams), himself, or all four.*
36. *I believe that Mr A's primarily duty is to the inhabitants and owners of the property he is reviewing – not to protect the interests of his client or their many related parties.*
37. *I hold out the Mr A peer reviewed the Geoscience report dated 29 November 2012, but referenced the report dated 30 November 2012 in his peer review, and his continuing inability to acknowledge that fact is a breach of ethics.*
38. *I hold out that any reasonable comparison of the reports in question would lead to the same conclusion. No technical training is required to spot this.*
39. *Mr A has tried to retrospectively reissue the peer review and advise that the person who "handed" him the original instruction and "reports" for the peer review is no longer employed by Arrow.*
40. *An admission that he was supplied with the wrong report originally by Arrow would suffice to bring this matter to an end.*
41. *Mr A appears to also be trying to apply financial pressure and intimidate my family, particularly my wife, in order to try and bully us out of this Appeal process. We will not be intimidated.*

DISCUSSION

30. It is apparent that Mr A reviewed the reports of both 29 November 2013 and 30 November 2013 prepared by Geoscience.
31. Mr A did not reference the report of 29 November 2013 in his report of 17 February 2014.
32. We have seen no evidence and no reason for Mr A to have realised the significance to Mr P of the difference between the 29 November 2013 and 30 November 2013 reports at the time he was writing his report of 17 February 2014.

¹ From Mr P's submissions of 31 July 2014.

33. That appreciation became clear once Mr P contacted Mr A. At that point, Mr A might have been clearer in his recollections, and sooner corrected his report references. However it is clear to us that Mr A did see both reports, and he has confirmed this. Mr A also confirmed that his instructions were to review all reports, including reports from other engineers, which he did.
34. We do not accept Mr P's submission that Mr A's primary duty is to the people whose house he is inspecting. It is not really a question of primary duties. Mr A has the obligations imposed on him by his contract to his employers, and by the rules he has to observe by reason of being a Chartered Professional Engineer. Neither of these is "primary", both exist and must be observed. At times these obligations may conflict, and this is when a Chartered Professional Engineer must exercise judgment in how to discharge those obligations.
35. However, in this matter we have seen no evidence at all that would support a finding that Mr A had somehow acted in bad faith to "cover up" the actions of his employer.
36. Mr A submitted, and we accept, that he considered all documentation that was put before him. It is not for Mr A to say whether the "right or wrong" information was reviewed by him. All he can say, and has clarified, is what he did review. Mr P now knows that both Geoscience reports were reviewed by Mr A.
37. While Mr P was quite correct in pointing out the discrepancy in Mr A's report of 17 February 2014, we accept that this was due to Mr A not properly referencing that report. Indeed any other explanation on the basis of the material before us would be pure speculation.
38. Finally, we have seen no evidence of Mr A trying to apply financial pressure to Mr & Mrs P.

OUTCOME

39. That the appeal is declined. The adjudicator's determination is upheld. In this case a detailed examination of the material before us leads us to the conclusion that there is no evidence to support a complaint that Mr A breached the code of ethics, even on a prima facie basis. Accordingly we agree that there is no applicable ground of discipline under section 21(a) to (d) of the Act. The complaint is confirmed as dismissed under rule 57(a).

Dated this 23 day of January 2015.



Andrew Hazelton
Principal



Roly Frost
Member



Jane Nees
Member and Consumer Representative

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**P
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**Addenda and Minute of the Chartered Professional Engineers Council
Dated 28 January 2015**

40. On 23 January 2014 we issued our decision in this matter.
41. Mr P has pointed out to us that there are a number of dates in the decision that are incorrect. While regrettable, these do not impact on the decision in any way. However, we issue the following addenda:

Addenda

- (a) Paragraph 1 Complaint Date stated to be 12 May 2015 when it should be 12 May 2014;
- (b) Paragraph 15 2 instances of November 2013 should be November 2012;
- (c) Paragraph 20 1 instance of November 2013 should be November 2012;
- (d) Paragraph 21 2 instances of November 2013 should be November 2012;
- (e) Paragraph 26 1 instance of November 2013 should be November 2012;
- (f) Paragraph 27 3 instances of November 2013 should be November 2012;
- (g) Paragraph 30 2 instances of November 2013 should be November 2012;
- (h) Paragraph 31 1 instance of November 2013 should be November 2012.
- (i) Paragraph 32 2 instances of November 2013 should be November 2012

Minute

42. The addenda can be read in conjunction with our original decision. Since we do not consider that it changes the substance of our decision we are

of the view that any time for the lodging of an appeal with the District Court runs from the date our original decision was delivered.

43. Mr P has also requested the Council's ruling on the issue of costs, particularly as Mr A had indicated that he would be seeking costs. Our decision is silent on this issue.
44. Our view is that should Mr A wish to make an application for costs then he should do so within the next 7 days, however, our initial view is that they should lie where they fall.

Dated this 28 day of January 2015.



Andrew Hazelton
Principal



Roly Frost
Member



Jane Nees
Member and Consumer Representative