

**In the matter of the Chartered Professional
Engineers of New Zealand Act 2002**

Appeal 03/25

AND

**In the matter of an appeal to the Chartered
Professional Engineers Council pursuant to
Section 35**

Between

Ms A
Appellant

And

Mr B
Respondent

Against a decision of

The Registration Authority under the
Chartered Professional Engineers of New
Zealand Act 2002

Decision of the Chartered Professional Engineers Council
Dated 28 October 2025

Introduction

1. Ms A (“the Appellant”) has appealed a decision made by the Chair of the Investigating Committee (“the CIC”) of the Registration Authority (“the RA”) not to refer a complaint against Mr B (“the Respondent”), a Chartered Professional Engineer, to an Investigating Committee (“a IC”) under Rule 60(a) of the Chartered Professional Engineers Rules (No. 2) 2002 (“the Rules”).
2. The panel of the Chartered Professional Engineers Council appointed to hear the appeal (“the Appeal Panel”) has been provided with a Bundle of Documents held by the RA in relation to the case. References to specific pages within this bundle are annotated “[BOD nn]”.
3. The RA was granted leave by the Appeal Panel to be heard and provided submissions in this matter.
4. The Panel suggested the Appeal was suitable for determination on the papers and the Parties agreed. Therefore, with the agreement of the Appellant, the Respondent, and the RA, the Panel conducted the hearing on the papers.

Legislation and case law

5. Summarised below is legislation and authority on the conduct of the Appeal, and legislation and authority considered by the Panel in deciding the Appeal.
6. The right of appeal in respect of decisions of the RA is established by s35 of the Chartered Professional Engineers of New Zealand Act 2002 (“the Act”).
7. Appeals to CPEC are by way of rehearing (s 37(2) of the Act).
8. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (“the Regulations”).
9. The Panel is entitled to confirm, vary or reverse a decision (or part of decision) under appeal (s 37(5)(a)), refer the matter back to the RA for it to reconsider (either generally or in relation to specific matters) the whole or any part of the decision (s 37(5)(b)), and may make any decision that could have been made by the decision authority (s 37(5)(c)).
10. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the Appeal Panel is entitled to take a different view from the decision authority, but the Appellant carries the burden of satisfying the Appeal Panel that it should do so.

11. The District Court in *Deo v Chartered Professional Engineers Council* [2024] NZDC 22169 in applying the Court of Appeal's judgment in *Green v Green*, stated that the application of Austin, Nichols means that while it is an appellant decision-maker's obligation to "form its own independent judgment on the merits of an appeal by way of rehearing"...it is still axiomatic that the appellant bears the onus of persuading the appellate court to reach a different conclusion. Of necessity, in discharging that onus the appellant must identify the respect in which the judgment under appeal is said to be in error."
12. The CIC is appointed by the RA under rule 83 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 ("the Rules") and has delegated authority to decide under rule 56 of the Rules as to whether or not to refer a complaint to an investigating committee.

Background

13. The Appellant's company, Company C, entered into a sale and purchase agreement for a property at Property D¹ ("the Property"). The date of the agreement is unknown. As part of the agreement, Company E ("the Vendor") was required to carry out some remedial earthworks including "... 1m deep reconsolidation, removal of concrete, recompaction, asphalt and yard prep with crushed rock, including integrating any topsoil and compact and top with 200mm of AP40 rolled and compacted basecourse..."². The Vendor engaged Company F ("the Contractor") to complete these works.
14. The Contractor provided a Producer Statement on 12 December 2021 that the "... 1m deep reconsolidation, removal of concrete, recompaction, asphalt and yard prep with crushed rockworks ..." ³ had been completed.
15. The quality of the remedial works was disputed by the Appellant (date unknown). A settlement between the parties was reached on 9 February 2022 whereby the majority the sale price was transferred to the Vendor and the sum of \$20,000 was held in trust to be paid on completion of works "... integrating any topsoil and compact and top with 200mm of AP40 rolled and compacted base course ... a new PS3 is issued..."⁴ and the completion of these works was to be "... verified by a 3rd party ..." ⁵
16. A second version of the Producer Statement – Construction was provided by the Contractor on 2 March 2022. In this version the works description was modified to say "... 1m deep

¹ RA Submissions para 8

² BOD 12

³ BOD 14

⁴ BOD 5

⁵ Ibid

reconsolidation, removal of concrete, recompaction, asphalt and yard prep with crushed rock, including integrating any topsoil and compact and top with 200mm of AP40 rolled and compacted basecourse...”⁶

17. The Contractor engaged Company G (“the Consultant”) as the third party to “... review the documentation for the earthworks services provided...”⁷
18. The Consultant produced a verification letter on 1 April 2022 based on a review of the following information⁸:
 - *New Zealand Ground Improvement PS3 Producer statement: Construction, 2 March 2022*
 - *New Zealand Ground improvement site photos*
 - *SGNT Nuclear Density Report...*
19. The letter was signed by the Respondent and concluded “... Based on the above review, we consider the scope of work has been delivered as expected.”⁹
20. The Appellant reached out to the Consultant on or before 5 April 2022 raising concerns that the work has not been completed to an acceptable standard.¹⁰ An exchange of emails marked by heightened tension took place between the Appellant and the Respondent on 6 April 2022.¹¹
21. On 12 April 2022 the Consultant disputed the allocations made by the Appellant.¹² On 13 April 2022 the Appellant emailed the consultant “... regarding your paragraph that you ensure your personnel comply with the engineering NZ code of ethical conduct.”¹³ stating that:¹⁴

When I contacted Lee, He tried to intimidate me into not contacting other Company G staff see emails below. In fact he appears to threaten me that he will ensure that no other engineers in NZ would assist me with work in the future if I persisted in querying his report.

He also confirms that he is in a position to confirm the performance of the work as expected. And challenges my right to query this. Clearly he has not taken professional duty of care and taken appropriate steps to be able to say the performance of the work is as

⁶ BOD 12

⁷ BOD 15

⁸ Ibid

⁹ Ibid

¹⁰ BOD 22 to 23

¹¹ BOD 21 to 22 and 29 to 31

¹² BOD 13

¹³ BOD 24

¹⁴ BOD 25

expected being the "laying of the 200mm of AP40". At the least I suspect he owes me an apology.

22. The Consultant responded to the Appellant on 13 April 2022:¹⁵

I agree that Mr B should of [sic] phrased his words better in his emails to you, and I have addressed this with him. Having not been involved in your phone calls with him that is hard for me to comment on.

Whilst we encourage our staff to always remain professional, even under extreme pressure, they are human and at times do react emotionally. Unfortunately [Respondent] reacted in an emotional way to your interactions with him. He will ensure in future that his correspondence is phrased in a more polite and professional manner. I apologise on behalf of Company G for any offense caused by Mr B's poor choice of words.

However, as per my letter, I fully refute the accusation that Mr B and Company G have acted unethically.

23. The next correspondence between the parties was an email from the Appellant to the Consultant on 15 March 2024 which was triggered by a reissue of the Consultant's letter on 6 March 2025.¹⁶ The Consultant elected not to engage with the Appellant but rather referred them to their client, the Contactor.

24. Review by the Appeal Panel of the letters prepared by the Consultant, and signed by the Respondent, show they are substantially the same apart from the following differences (additional/different text underlined):¹⁷

6 March 2024

List of information reviewed:

- *New Zealand Ground Improvement PS3 Producer statement: Construction, 2 March 2022.*
- *New Zealand Ground improvement site photos (held on file).*
- *SGNT Nuclear Density Report, attached.*
- *AP40 hardfill has been compacted to an average of 100% (range 98 to 101%) of the maximum dry density (MDD). This level of compaction is far in excess of typical compaction*

1 April 2022

List of information reviewed:

- *New Zealand Ground Improvement PS3 Producer statement: Construction, 2 March 2022*
- *New Zealand Ground improvement site photos*
- *SGNT Nuclear Density Report, attached.*
- *AP40 hardfill has been compacted to an average of 100% (range 98 to 101%) of the maximum dry density (MDD). This level of compaction is far in excess of typical compaction*

¹⁵ BOD 24

¹⁶ BOD 34

¹⁷ BOD 9 and 15

requirements. A typical gravel raft for a structural foundation usually has a relative compaction requirement of 95% of the MDD. These hardfill compaction results cannot be achieved without significant densification of the reworked subgrade beneath the hardfill which further lends to the works demonstrating a high-quality level.

Based on the above review, we consider that the "work required to integrate any topsoil and compact and top with 200mm of AP40 rolled and compacted base" has now been completed.

*Mr B
Post Nominals and Title*

requirements. A typical gravel raft for a structural foundation usually has a relative compaction requirement of 95% of the MDD. These hardfill compaction results would not have been achieved without significant densification of the reworked subgrade beneath the hardfill to provide confinement.

Based on the above review, we consider the scope of work has been delivered as expected.

*Mr B
Post Nominals and Title*

25. The Appellant raised concerns with the RA and documentation was developed between June and August 2024.¹⁸
26. The concerns raised by the Appellant were shared with the Respondent on 8 August 2024¹⁹ and they provided a response on 27 September 2024.²⁰ The Respondent's response was shared by the RA with the Appellant on 14 October 2024 and the Appellant provided their response on 5 November 2024.²¹
27. The complaint was referred to CIC who issued their decision to dismiss the complaint and not refer it to Disciplinary Committee on 16 February 2025.²²
28. The Appellant appealed the decision on 5 March 2025.

Evidence received

29. Under clause 15 of the Regulations, the Council may receive any evidence that the RA would have been entitled to receive on the decision being appealed.

¹⁸ BOD 16 to 50

¹⁹ BOD 61

²⁰ BOD 65 to 66

²¹ BOD 73 to 90

²² BOD 110 to 114

30. The evidence considered by the Appeal Panel in arriving at its decision included:
- (a) Notice of appeal dated, and received on, 5 March 2025 (“Notice of Appeal”)
 - (b) The paginated Bundle of Documents [BOD 1 to 114], provided by the RA on 2 April 2025
 - (c) Appellant Submissions dated 30 June 2025
 - (d) RA Submissions dated 16 July 2025
 - (e) Appellant Reply Submissions dated 20 July 2025.
31. The Appeal Panel sought (via email on 4 August 2025) and received confirmation from the Respondent (via email on 5 August 2025) that they did not intend to provide submissions.

Grounds of appeal and outcome sought

32. The Appellant has laid out the grounds of appeal as:²³

I am writing to formally appeal the outcome of the recent complaint regarding the engineering work on my site. I believe the decision is unjust and undermines the integrity and esteem of the engineering profession. As a member of the public, I expect to trust engineers to operate within an ethical framework and to uphold their responsibilities.

I entered into a contract relying on the engineer to verify that the work was completed before money held in trust could be released. The engineer was made aware that the purpose of the letter he was issuing was specifically to release funds held in trust pending the completion of works. The engineer was made aware that I did not believe the works had been completed in accordance with the specification and I provided evidence of independent testing to support my claim.

I received a letter from the engineer affirming that the work completed by his client was done, specifically to facilitate the release of funds held in trust. The engineer was aware of the intent of the letter of confirmation that he was providing, namely that it was to approve the release of funds held in trust subject to the completion of the work. However, the engineer neither visited the site nor performed any testing. Independent testing completed in accordance with NZS 4407:22015 2.4 and 8.2. by Company H confirmed that the work was not completed, and I shared this evidence with the engineer.

The engineer lacked knowledge of my intended use for the site. I did not ask for his opinion about the specification, nor did I change the specification to be what he thought it should be. He did not question why I wanted that specification and seek to have an amended agreed so how could he make a judgement that I should be happy with an alternative. He did not clarify that he was confirming alternative work was completed and he deliberately worded the conclusion of the letter so that the conclusion said that the work was completed in accordance with the specification. He deliberately concluded with his

²³ Notice of Appeal Section 5

clients so they may have their funds in trust released. I am considerable out of pocket as a result. His failure to test or visit the site raises serious concerns about his ability to provide independent confirmation of the work done. The density testing conducted was neither independent nor random, nor did it address the specification requirements, namely depth of product laid or in fact test the product laid and the engineer's client was present during this process.

This situation has led to a significant breach of trust, and I am disheartened and feel betrayed that the complaints process seems to support this behaviour. Additionally, I faced threats from the engineer when I attempted to address my concerns, which has further eroded my confidence in the entire process.

I urge you to reconsider this outcome, as it sends a troubling message about accountability within the engineering profession.

Thank you for your attention to this serious matter.

The Appellant is seeking a reversal of the decision of the CIC not to refer the complaint to an IC. ²⁴

Discussion – Consideration of grounds of appeal

33. This Appeal relates to the decision by the CIC not to refer the complaint to an IC. The investigation of a complaint by the CIC is governed by rules 56 to 59, with the decision of the CIC under rule 60 being to either:
- (a) refer the matter to an investigating committee in accordance with rule 59(b); or
 - (b) dismiss the matter on a ground in rule 57.
34. The Appellant claims that the Respondent breached the Act and the Engineering New Zealand Code of Conduct, under the following headings:^{25,26}
- 1. Negligence and lack of competence
 - 2. Misrepresentation and lack of integrity
 - 3. Failure to act with care and diligence
 - 4. Unprofessional and intimidating conduct
 - 5. Conflict of interest and improper influence
35. The Respondent has not provided submissions specific to this appeal process but rather referred the Appeal Panel to his responses to the complaint investigation process.

²⁴ Notice of Appeal Section 6, noting that the Appellant acknowledged that that had incorrectly also ticked the box referring to the referral of the complaint to an IC or DC

²⁵ Noting that as a chartered professional engineer they are bound by the Rules which are in essence the same as the Engineering New Zealand Code of Conduct

²⁶ Appellant Submissions page 1 to 2

36. Specifically, on 27 September 2024²⁷ the Respondent argued that the Appellant's assertion regarding incomplete earthworks was incorrect. The Respondent maintained that the Company H testing referenced by the Appellant did not prove the work was incomplete. Instead, the Respondent considered it a particle size distribution (PSD) test that did not directly address whether the contractual scope was met. The Respondent noted that, after the works were handed over in December 2021, the owner and other contractors undertook further groundworks, which could have affected the site prior to the Company H testing.
37. The Respondent noted that the original specification ("*integrating and compacting topsoil and top with 200mm of AP40 rolled and compacted basecourse*") was vague and not good engineering practice but stated that the Contractor used appropriate methods and materials, including AP40 gravel and compacted to a high standard. The Respondent maintained that, in their professional judgement, the intent of the scope had been achieved, and that the revised letter of 6 March 2024 simply clarified the wording to match the contract specification.
38. The Respondent further explained that the Company H PSD test was not provided to the Consultant until June 2024, and that, in any case, there was no material difference between AP40 and AP65 for the purposes of this work. The Respondent acknowledged visiting the site before the works began and stated that another geologist from their firm visited at completion. The Respondent confirmed that they did not perform any testing, but that independent compaction test results (NDMs) and other documentation were reviewed.
39. The Respondent denied any unprofessional conduct, stating that they were instructed not to communicate directly with the Appellant and that the Appellant's persistent attempts to contact the Respondent and other staff were inappropriate. The Respondent also denied any breach of professional or ethical standards, asserting that their conclusions were based on the information available and their engineering judgement.
40. The RA asserts that the matter is fundamentally a property dispute, not an engineering conduct issue. It involves a disagreement between a Purchaser (the Appellant) and the Vendor over earthworks at the property.²⁸
41. The Appeal Panel does not comment on that aspect but notes that the quality of the earthworks is not the subject of this Appeal but rather whether there is sufficient evidence that the CIC erred in not referring the complaint to an IC.

²⁷ BOD 66 to 70

²⁸ RA Submissions para 1

42. The RA goes on to submit²⁹ that the Appellant’s appeal largely repeats arguments already raised and does not demonstrate any error in the Adjudicator’s decision. The RA maintains that the Respondent’s conduct was objectively assessed and found to be reasonable.
43. The RA further contends that the Respondent was engaged solely to review documentation provided by the contractor and was not a party to the underlying sale and purchase agreement. The RA argues that the Respondent’s actions were consistent with the standards expected of a Chartered Professional Engineer, and that the Appellant’s claims regarding duties of care are not substantiated by the evidence. The RA concludes that the CIC’s findings are reasonable and supported by the material before the Council, and that no error warranting intervention on appeal has been shown.
44. The Appeal Panel agrees that the Respondent was engaged solely to review documents. However, the Appeal Panel considers there is sufficient evidence to indicate that in carrying out that engagement, the Respondent fell short in meeting the requirements of r 42F(a), namely:

A chartered professional engineer, in performing, or in connection with, the engineer’s engineering activities,—

(a) must—

(i) act with honesty, objectivity, and integrity; and

(ii) treat people with respect and courtesy;

45. Firstly, in their own words the Respondent explained that:³⁰

As a result of the vague and contrary specification, I have interpreted the completion of the scope of work with engineering judgement. As per my 6 March 2024 letter, I consider that the intent of the scope of work has been achieved. It should be noted that the 6 March letter is a revision from the original letter issued on 1 April 2022. The letter was revised to include the word for word prescribed scope in the conclusion. This sentence was initially left out as I did not agree with the scope – as it suggested that topsoil was integrated back into the ground.

46. The Appeal Panel agrees that the wording of the conclusion in the first letter aligns with the application of engineering judgement. However, the adjustment of the letter almost two years later (6 March 2024 c.f., 1 April 2022) is when the Respondent erred in their professional conduct. They knew that the money held in trust would not be released unless the prescribed words were provided by an independent person. They adjusted the letter even though they knew the activity had not been completed as described. This behaviour does not align with the requirement to act with honesty, objectivity and integrity.

²⁹ RA submissions para 34 to 53

³⁰ BOD 67

47. Secondly, the email exchange between the Respondent and the Applicant fell short of the required standard for a chartered professional engineer of treating people with respect and courtesy, including emotive statements: ³¹

I am in a position to confirm that the performance of the works is as expected. What are your qualifications?

Ironically, when you want to build on this site, you will need lots of help from engineers, many of whom are unlikely to want to work for you after this drama.

Please refrain from harassing other Company G staff.

48. The Respondent's employer agreed and apologised for the conduct on 13 April 2022.³² The Appeal Panel does not agree that this breach of professional conduct is purely an employment matter as concluded by the CIC.³³
49. Based on the evidence provided, the Appeal Panel agrees with the Appellant that there was sufficient evidence that warranted further investigation of the complaint by the RA and that the CIC erred in deciding not to refer the complaint to an IC. Specifically, they did not adequately consider the high standard that r 47F requires a chartered professional engineer to operate at.
50. For the avoidance of doubt, the Appeal Panel does not conclude that because the Respondent appears to have fallen short of the professional standards required of a chartered professional engineer that means the works do not meet the required engineering standard. That aspect is not within the jurisdiction of this appeal and has therefore not been considered by the Appeal Panel.

Findings

51. The Appeal Panel has considered the grounds of appeal cited by the Appellant, the Appellant's Submissions, the RA Submissions and the Appellant's Submissions in response, and the contents of the BOD.
52. The Appeal Panel finds that there is sufficient evidence that warrants further investigation of the complaint by the RA.
53. The appeal is therefore upheld and the RA's decision not to refer the complaint against the Appellant to an IC is overturned. The RA is therefore required to refer the complaint to an IC.

³¹ BOD 29 and 30

³² BOD 24

³³ BOD 113

Costs

54. The Appellant has sought \$20k compensation but no costs. For the avoidance of doubt, costs are not a form of penalty or compensation but rather intended to be an acknowledgement of the cost burden associated with bringing an Appeal. We are not able to provide for compensation.
55. The costs incurred by all parties to this appeal will therefore remain where they lie.

Right of appeal

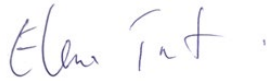
56. In accordance with s 35 of the Act either party may appeal this decision to the District Court within 28 days.

Dated 28 October 2025

Signed by the Appeal Panel



Simonne Eldridge
Principal



Elena Trout



Manjit Deygun