

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

Appeal Number 02/19

AND

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

Between

Mr A

Appellant

And

Mr B, CPEng

Respondent

Decision of the Chartered Professional Engineers Council
Dated 10 November 2020

The Appeal

1. This decision is a decision on an appeal to the Chartered Professional Engineers Council (“the Council”) under the Chartered Professional Engineers of New Zealand Act 2002 (“the Act”), the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (“the Rules”) and the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (“the Regulations”).
2. The Institution of Professional Engineers New Zealand (IPENZ) trading as Engineering New Zealand is the Registration Authority under S4 of the Act.
3. The appeal relates to the decision by Engineering New Zealand, to a complaint made by Mr A about Mr B.
4. In the complaint Mr A claimed that in his capacity as a Chartered Professional Engineer, Mr B had:
 - a. dishonestly invoiced him for shop drawings; and
 - b. engaged with him in an unprofessional manner
5. The complaint was referred to an Adjudicator (a chair of an Investigating Committee) who for reasons set out in their decision, decided the complaint should be forwarded to an Investigating Committee for formal investigation. The Adjudicator considered there were too many inconsistencies and questions to justify dismissal and considered Mr B’s professionalism could not be separated from the complaint about the invoicing.
6. Following their investigation, the Investigating Committee dismissed the complaint in its 5 December 2019 decision, for the following reasons:
 - a. the aspect of the complaint relating to Mr B’s honesty in invoicing for shop drawings is dismissed under Rule 57(a) of the CPEng Rules and clause 8(a) of the Disciplinary Regulations as there is no applicable ground of discipline; and
 - b. the aspect of the complaint relating to Mr B’s professionalism is dismissed under Rule 57(ba) of the CPEng Rules and clause 8 (c) of the disciplinary regulations as the alleged misconduct is insufficiently grave to warrant further investigation.
7. Mr A’s appeal contains four grounds, which are summarised as:
 - a. Mr B did not act with honesty and integrity
 - b. The Investigating Committee interviewed Mr B and not himself (he offered to meet them in Wellington)
 - c. The Registration Authority took 2 years to make its decision

- d. The Investigating Committee had not explained/addressed the inconsistencies identified by the Adjudicator

Background and Context for the Appeal

8. Mr B is a Director of Company C, of Town and a Chartered Professional Engineer (CPEng).
9. Late November 2012, Company D engaged¹ Company C to provide engineering services covering “working with client to develop conceptual plan” for Mr & Mrs A’s proposed new home at their address.
10. Company C completed this work in August 2014 and was further engaged to provide detailed design, “Design (Engineering) - progressed to the final Design of the Full Structural Design at Mr A’s address), on a time-write and hourly rate basis.
11. On 14 November 2014, Mr B forwarded a copy of the design documentation issued for consent purposes to Mr A’s architectural designer. He also forwarded a copy of this information complete with a cover letter to Mr A. This design documentation included:
 - design (detailed calculations, PS1, LBP form), drawings (concrete and form layout drawings setting out rebar and overall design along with the steel detailed sections drawings and associated 3-D) and specifications
 - an invoice (I001900)
 - timesheet records of Company C’s personnel time spent on the project for the period 22 August to 14 November 2014.
12. In early December 2014, Mr A disputed the invoiced amount.
13. On 23 January 2015, the parties met at Mr B’s Lawyers office to negotiate a settlement and Mr B’s Lawyers [BOD 056]² emailed the parties confirming the scope of the settlement covered the then outstanding amount of \$61,610.68.
 - a. The dispute over the invoices (and any other matter) is settled by Mr A paying Company C \$44,000.00 (incl of GST), with payment to occur as soon as Mr A is able to do so.
 - b. The inspections that are going to be required by Company C as per the programme set out in the PS1 will be invoiced at a total cost of no more than \$6,000.00 (incl GST);
 - c. Any other work that is required of Company C for this project will be invoiced to Mr A, both parties would use their best endeavours to ensure total clarity of understanding as to what is required and the basis upon which invoicing would occur, namely *on an hourly basis*.
14. Mr A paid the agreed settlement amount on 23 January 2015.

¹ [BOD146 & 147] letter of engagement dated 22 November 2012 and signed 23/11/12

² [BOD 056] GM4.htm attachment to [BOD 001] email from Mr E of Mr B’s Lawyers to Mr A and copied to Mr B

15. At the end of February 2015 District Council issued a building consent for the build.
16. Works commenced on site in early March 2015.
17. In March 2015, Mr A asked Mr B to address issues associated with the foundation detailing, which he completed late March.
18. On 14 & 15 March 2015, Mr B visited the site to observe a void, and inspected the gravel pit.
19. On 20 March 2015, Mr B emailed his lawyers querying the settlement amount.
20. On 1 April 2015 a representative of Company C visited the site to observe the foundation preparation.
21. On 10 May 2015 Mr B's lawyers responded to Mr B's request of 20 March 2015.
22. On 12 May 2015 [BOD 083] Company F (Mr A's' selected steel fabricators) requested weld details, hole locations, beam numbers and beam referencing and advised *"at the time of tender you advised shop drawings were available, I quoted (the) job from Eng drawings. These shop drawings are a joke. With shop drawings you should be able to find appropriate drawings for manufacturer of a particular beam in a couple of minutes. These drawings should have all the information for fabricator to complete beam. Shop drawings should speed up manufacture and my quote was based on this being the case. These Engineering and shop drawings are slowing down the process at my cost"*
23. On 10 June 2015, a representative of Company C observed the ground floor garage foundation and wall starters.
24. On 13 & 19 June 2015 Mr B observed the works.
25. In June 2015 Company C invoiced Mr A for further time spent.
26. In the period May to June 2015, Company C carried out further design to address foundation and retaining wall issues.
27. On 1 July 2015 Company F sent a letter to Mr A, advising they had not noted there were 2 separate emails forwarded to them on the 19 November 2014 email, when pricing the project.
28. On 22 July 2015 Company F queried the connection between the comfloor and a support beam. They noted *"engineering drawings should show all the main structural steelwork with the shop drawings being produced from the information shown on the engineers' drawings"*.

29. On 12 August 2015 [BOD 023] a representative of Company C observed the construction including observing the preparation for the upper concrete slab.
30. In August 2015 Company F advised Mr A they could not proceed with the fabrication and the install of the steelworks on the upper floor based on the consented drawings, *"as the upper floor columns could not be attached to the lower floor units"*.
31. On 30 August 2015 Mr B emailed Company F advising *"he has steel shop drawings available and would release them for a payment."*
32. On 1 September 2015, Company F advised Mr A [091] that they *"were unable to continue with the fabrication and installation of any steelworks at Mr A's house" and that "for Company F to continue ... they would require a working relationship with an Engineer", and that "Engineer would need to confirm the steelworks as currently installed as acceptable"*.
33. On 17 September 2015 Mr B emailed [092] Mr A advising he had an email from Company F which stated Company F *"do not have enough details nor confidence to complete the upper steel placement without full shop drawings"*, and that Company F had shown him on site that they were *"having difficulty in the placement of the steel in the lower areas and had made unacceptable errors"*. Mr B stated he had *"no confidence in Company F's approach to date to complete the upper steel placement floor without shop drawings"*. Mr B also advised the cost for the shop drawings. Once payment had been received Company C would make any changes needed to modify small variations as may be required, and address those from the architect.
34. On 21 September 2015 [BOD 202], Mr B emailed Mr A requesting the payment. Mr A made full payment into Company C's bank account and requested an invoice to cover the payment.
35. On 22 Sept 2015 Mr B issued a copy of steelwork framing Rev B drawings in dwf [BOD 205].
36. On 22 September 2015 Mr B also issued an invoice covering *"variations to the design"* with a description *"various variations as recorded and authorised by the client or the builder due to queries as either rung through or advised in emails, with the cost itemised under the description of "shop drawings"*.
37. On 24 Nov 2015 Mr A received *"the final drawings"* from Company C.
38. The construction continued.
39. In April 2017 Mr B issued a PS4 for construction observation following receipt of a PS3 from Mr A covering the construction.
40. On 28 Dec 2017 Mr A advised Mr B by letter that he had received the Code Compliance Certificate (issued by the District Council), and also informed Mr B of his dissatisfaction

with his performance and unprofessional conduct on this project and requested payment of \$27,637.38 (without prejudice). The issues raised included:

- Lack of attention to the build/project costs
- The value of Company C's Fees and monies paid
- Design and drawing errors, and lack of design/detailing (baseplates, steel posts, intermediate anchors, comfloor reinforcing – 300crs ok on site, balcony wall off outriggers, downpipe within post detail)
- Variances in the information received from Company C office
- Additional on-site foundation and steelwork changes and the costs associated with these
- Communication
- Discussing the financial arrangements of this contract with others

The Complaint

41. Mr A contacted the Registration Authority in December 2017 [BOD 001] and submitted his complaint with supporting documentation.
42. The concerns raised by Mr A were that Mr B had:
 - a. Dishonestly invoiced him for shop drawings, and
 - b. Engaged with him in an unprofessional manner.
43. The Registration Authority commenced its investigation on the 23 February 2018. In a phone conversation Mr A told the Registration Authorities complaints research officer that *"he was not saying Mr B intentionally created errors", and that "he was not overly concerned by the perceived errors"*. He said that *"his main concern was over Mr B's invoice for the shop drawings and his threats to cancel the contract if Mr A did not pay that invoice"*.
44. The matter was referred to a chair of an investigating committee, acting as an Adjudicator for a decision as to whether the complaint could be dismissed under Rule 57. The Adjudicator issued their reasons (as outlined in paragraph 5 above) and the complaint was referred to an investigation committee for formal investigation.
45. An Investigating Committee investigated the complaint. The parties attended a mediation on 31 July 2019 where the matter remained unresolved. The Investigating Committee issued their decision on 5 December 2019. For reasons outlined in paragraph 6 above, the Investigating Committee dismissed the complaint under Rule 57(a) and Rule 57(ba).

The Appeal

46. A party to a decision by the Registration Authority has the right to appeal to the Council under S35 of the Act. The appeal must be in writing, lodged within 28 days of the decision and/or any further time the Council considers on application within that same 28 days.
47. On 13 December 2019, Mr A emailed his notice of appeal to the Council.
48. On 18 December 2019, Mr Chris Harrison, Chair of the Council, wrote to the parties acknowledging the Council's receipt of Mr A's appeal notice; advising the appeal panel; and advising that Ms Hardie (Principal of the Panel) would shortly communicate regarding the process and confirming all communications between the parties was to be via email.
49. On 23 December 2019, Ms Hardie introduced the Panel to the parties by an emailed letter, which also outlined the process; requested the Registration Authority to issue a paginated bundle of all documentation that was available to the Investigating Committee at the time they made their decision; and provided an outline of the timing of submissions and the scope of the Council's jurisdiction.
50. Mr A's grounds of appeal are summarised in this notice, and further in his 27 January 2020 submission. They are:
 - (a) Mr B did not act with honesty and integrity
 - (b) They (the Investigating Committee) interviewed Mr B but refused myself, even though I offered to meet in Wellington
 - (c) They (the Investigating Committee) took 2 years to make their decision
 - (d) The Adjudicator considered that they had to clarify inconsistencies between invoiced for shop drawings or arrears, this has not been explained
51. Mr A highlighted the following errors in the investigating committee's decision:
 - (a) pgh 22. Mr B's estimate at the time was \$20k-30k;
 - (b) pgh 26. The conveyance letter did not state that shop drawings would need to be developed
 - (c) pgh 27. Mr B was only able to recommend 1 fabricator
 - (d) pgh 28. Mr B confirmed at settlement that consent drawings were okay for construction and was aware we had stated as was doing inspections
 - (e) pgh 29. The foundation issues came about because of Mr B misinterpretation of the drawings
 - (f) pgh 30. Company F point in this email was that all drawings, structural and shop drawings were not up to standard

- (g) pgh 31. It is standard practise to be constructing off for consent marked drawings, Mr B had confirmed they were fit for construction
- (h) pgh 32. This is incorrect, this invoice was paid...
- (i) pgh 33. Changes are made in consultation with Mr G.
- (j) pgh 34. We then paid for these socalled shop drawings but never received
- (k) pgh 35. G told Company F that they could not continue
- (l) pgh 36. Correct but never received shop drawings
- (m) pgh 40. Incorrect, this was 2 months after \$16k payment
- (n) pgh 43. There was never any arrears
- (o) pgh 44. If he could not produce shop drawings why was he asking \$16k
- (p) pgh 63. Invoice paid
- (q) pgh 64. I never asked for shop drawings. I already had shop drawings. Mr B never asked for payment of unpaid invoices as there were never any

He also considered:

- (r) His letter of 28 Nov 2017 has not been answered Mr B's unacceptable performance and unprofessional conduct, the focus is only on supply of shop drawings promised;
- (s) BOD025 Invoice I001900 shows an outstanding amount of \$13505.75 which is covered by an agreement;
- (t) BOD077 – page is blank;
- (u) BOD101 Mr B email 28 Nov 2017 confirms settlement agreement with his comments – agree to disagree;
- (v) BOD 244 ENZ RFI – all original drawings forwarded for BC application – not new drawings \$18,400;
- (w) BOD 273 – drawing notes – are not correct as was inspected by Mr H pre pour (14 August 2015 for prepour, BOD 218);
- (x) BOD 304,305 sketch sent 19 May 2015. And 210 – Mr A aware of the detail, Mr G okayed. Agreement not only for inspections (see copy agreement prev sent). Shop drawings Mr B referring to here already provided to Mr A at that time (ENZ have drawings);
- (y) Mr B's notes for chair missing from the bundle - 15 April 2019;
- (z) Not heard fairly;

- (za) No explanation on why Mr B was asking for \$18,400, nothing supplied once paid.
52. The outcome of the relief sought by Mr A was that Mr B is held responsible for his actions and monies are paid back.
53. In his submission, he deleted the reference to “all monies are paid back” in acknowledgment that this relief is outside the scope of both the Registration Authority and The Council’s jurisdiction.
54. The Registration Authority emailed a link to their bundle of documents [BOD] to all parties on 16 January 2020. The BOD consisted of 2 pages of content and 341 numbered pages. The BOD covered the period 18 December 2017 to 5 December 2019 and included the Investigating Committee’s decision on the 5 December 2019.
55. On 17 January 2020, the Registration Authority confirmed the BOD was complete to the best of their knowledge, with attachments included following the relevant emails and pages 008, 055, 057, 065, 069, 073, 079, 094, being blank.
56. Written submissions were received by the Panel as follows:
- Mr A 27 January 2020;
 - Ms I³, on behalf of Mr B 14 February 2020;
 - The Registration Authority 14 February 2020;
 - Mr A:
 - Reply in Response to Mr B’s Submission 19 February 2020;
 - Reply in Response to Registration Authorities’ Submission 19 February 2020;
57. Mr A requested and considered it important that the hearing be in person. Ms I advised Mr B’s preference was for the hearing to be on the papers; and the Registration Authority had no preference.
58. An in-person hearing date was set and agreed for Friday 3 April 2020 in Wellington.
59. On 18 March 2020 Ms I forwarded by email a further document that Mr B wished to rely on as evidence. Prior to consideration by the Panel, Ms Hardie forwarded a copy of this email to Mr A and Ms Campbell and sought submissions on whether the document could be included. Both Mr A and Ms Campbell responded. No objection was received.
60. On Wednesday 25 March 2020, NZ moved to a national health lockdown, which placed contact and travel restrictions on all persons who were not carrying out essential services. The hearing date was postponed until a further agreement on time and/or method of delivery could be established.

³ Senior Solicitor at Mr B’s Lawyers

61. On 3 April 2020, Ms Hardie sought further submissions from the parties with regards to the following questions:
1. What is your understanding of the agreed terms of the mediated agreement with respect to?
 - The invoices and their amounts (incl GST) covered;
 - The agreed sum (incl GST) settled on;
 - The agreed terms for further works;
 - Whether the agreed sum was full and final.
 2. What is your understanding of the information attached “4-Appendix Items photos poor workmanship final rev0”, received from Ms I on Wednesday 18 March 2020.
62. Written submissions were received:
- Mr A 08 April 2020;
 - The Registration Authority 14 April 2020;
 - Ms I on behalf of Mr B 15 February 2020;
 - Mr A – Reply in Response to Submissions 23 February 2020;
63. On 14 May 2020, Ms Hardie emailed the parties seeking agreement to the hearing being via video conference. A hearing via video conferencing on Friday 5 June 2020 at 9am was subsequently arranged by The Council.

The Hearing

64. The hearing was held via video conference on Friday 5 June 2020. In attendance at the hearing were:
- Ms Sandra Hardie Appeal Panel Principal
 - Ms Sarah Sinclair Appeal Panel Member
 - Mr Alan Winwood Appeal Panel Member
 - Mr A The Appellant
 - Mr E Counsel for the Respondent
 - Ms I Counsel for the Respondent
 - Mr B The Respondent
 - Ms Stacey Campbell Legal Counsel for the RA.
65. Ms Hardie readvised the procedure was as previously outlined. All parties would present their submissions in the same order as the written submissions. The Panel

could seek clarifications and parties would be able to ask questions via the Principal of the Panel.

66. Ms Hardie confirmed that the hearing would only be recorded by the Panel. In the event the Panel's decision was appealed to the court the recording would be transcribed if requested. If not appealed the recording would be deleted.
67. The submissions of all parties were presented on the basis the information submitted to the Panel to date and was taken as read by the Panel.
68. Mr A talked to his submission, highlighting the information on:
 - [BOD 206] - Mr E's email 23 January 2015 advising the terms of the confirming the settlement agreement;
 - [BOD 230] - Mr B's email of 09/12/2014 to Mr A in which in addition to references to fee estimates, an outstanding account a highlighted sentence in which Mr B wrote ... "I don't want to hold you up at all in your build time nor shall I hold any ill feeling against you in this current impasse other than I am most happy to continue to assist you on this project".
 - [BOD 210] - Mr A's sketch detail of 19 May 2015 requesting a review of the upper floor column connection reviewed (with email reference Mr F, BOD 208 dated 19/09/2015 suggests approved by Company C, yet Mr B proposing a change in Sept.
 - Mr B stopped the job
 - [BOD 23] - An upper floor pre-pour inspection 12/8/2015 had been carried out (pre-pour inspection of 12/8/15 by Mr G), Mr B knew prior to the concrete pour of the site variance in the upper steel connections
 - [BOD 217] - Detailed draughting by Mr F 21 May 2015, site inspection by Mr B 19 June 2015
 - [BOD 215] - emails Mr B
 - [BOD 200] - email Mr B to Company F - 30/08/2015 "....We have full steel shop drawings for everything on this job but Lloyd did not want to pay his full account, so what he has paid for to date he has and we require the further outstanding amount to deliver as may be required.....A further figure of 10k for the shop drawings was allowed for to be paid directly to us from the subcontractor for the detailing, design and delivery with print out of the shop drawings as this is a separate function to the clients design and permit drawings. We recommended full price formally to him in writing and listed you (Company F) as the only other alternative in Qt"
 - [BOD 231] - No PS4
 - [BOD 199] - letter confirming Company F had received all the drawings
69. Mr F presented Mr B's submission.

70. Mr B further talked to the terms of the short form agreement [BOD 146] with emphasis on the risk portion of the form in relation to fees; advising the additional lump sum covered the further design works needed to address variances made in steel fabrication and steelworks placement and included the risk associated varying from the original design intent. He suggested Mr A had a choice, he could have proceeded with another Engineer rather than paying the lump sum fee.
71. Ms Hardie sought clarification of the Company C's shop drawing references contained within the structural drawing set and asked whether these shop drawing references were a reference to the AS series drawings included with the Company C drawing set associated with the PS1 or some other shop drawings prepared by Company C. Mr B confirmed the reference was to the Advance Steel drawings provided with the PS1 and not some other shop drawing set, and further advised the Advanced Steel programme could have been used as shop drawings prior to the construction variance made by the steel fabrication and placement had the control point not been varied. Mr A also confirmed these references were associated with the original drawing set and not another shop drawing set.
72. Ms Sinclair asked whether at the time of the request for further monies there were barriers to appointing another Engineer, which contributed to the continuation of Mr B as Engineer. Mr F advised there were none but suggested the cost of another Engineer would likely include them having to familiarise themselves with the project and the variations. Mr A advised he felt there was no other option but to continue with Mr B at that time, his understanding was that he required the shop drawings Company C held and that these shop drawings were required for the project to proceed.
73. Ms Campbell stated their submission outlined the position of the Registration Authority. She noted:
- a. That the professional disciplinary processes do not exist to punish the individual, but to ensure professional standards are maintained.
 - b. She noted that the CIC had indicated that there were some lessons that could be learned from this matter
74. Ms Hardie closed the hearing and confirmed that the next step was for the Panel to meet to consider the appeal and issue the findings to all parties.

Consideration of the Appeal

75. In accordance with S37 (2) of the Act appeals to the Council are by way of a rehearing conducted in accordance with any regulations made under S65 of the Act.
76. The Council are entitled to confirm, vary, or reverse a decision (section 37(5)(a)). The Council may make any decision that could have been made by the decision authority (section 37(5)(c)). Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, we are entitled to take a different view from the Registration Authority, but the appellant carries the burden of satisfying us that we should do so.
77. The Panel have carefully considered all information presented including the contents of the bundle of documents, the submissions from Mr A; Ms I and Mr F on behalf of Mr B,

the submission from Mr B, and the submission from the Registration Authority, in forming our decision.

78. As commercial matters fall outside the scope of the Act, they must also fall outside the Panel's consideration.
79. In accordance with Rule 60(b), the Panel is required to consider whether there are grounds for not referring the matter on to the disciplinary committee.

60. Investigating committee must determine whether or not to refer complaint or inquiry to disciplinary committee

The investigating committee must, as soon as practicable after receiving a complaint or inquiry, investigate the matter and-

- (a) Refer the matter to a disciplinary committee: or*
- (b) dismiss the matter on a ground in paragraph (a) to (f) of rule 57*

57. Grounds for not referring complaint to Investigating Committee

The Registration Authority may dismiss a complaint without referring it to an investigating committee if the chairperson of investigating committees decides under rule 58 that—

- a) there is no applicable ground of discipline under section 21(1)(a) to (d) of the Act; or*
 - b) the subject matter of the complaint is trivial; or*
 - ba) the alleged misconduct is insufficiently grave to warrant further investigation; or*
 - c) the complaint is frivolous or vexatious or is not made in good faith; or*
 - d) the person alleged to be aggrieved does not wish action to be taken or continued; or*
 - e) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or*
 - f) an investigation of the complaint is no longer practicable or desirable given the time elapsed since the matter giving rise to the complaint.*
80. The Panel considers Rule 57 b) to f) do not apply. The matter is not trivial. Mr A considers that he has been impacted by the actions of Mr B. Rule 57 b) does not apply. The complaint is not frivolous or vexatious, Mr A has potentially been emotionally impacted. The Panel does not consider the actions to be of a vexatious nature. Rule 57 c) does not apply. Mr A clearly wants to proceed with the action, Rule 57 d) does not apply. Mr A has a clear personal interest in the matter, Rule 57 e) does not apply. Rule 57 f) does not apply as it is still possible for the complaint to be investigated.

81. This leaves the Panel to consider Rule 57 a) and whether there are applicable grounds for discipline under section 21(1)(a) to (d) of the Act and if so whether the matter is sufficiently grave to warrant referral of the complaint to the disciplinary committee. Section 21 of the Act states:

21. Grounds for discipline of chartered professional engineers

- (1) *The Registration Authority may (in relation to a matter raised by a complaint or by its own inquiries) make an order referred to in section 22 if it is satisfied that a chartered professional engineer—*

(a) *has been convicted, whether before or after he or she became registered, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more if, in the Authority's opinion, the commission of the offence reflects adversely on the person's fitness to practise engineering; or*

(b) *has breached the code of ethics contained in the rules; or*

(c) *has performed engineering services in a negligent or incompetent manner; or*

(d) *has, for the purpose of obtaining registration or a registration certificate (either for himself or herself or for any other person),—*

(i) either orally or in writing, made any declaration or representation knowing it to be false or misleading in a material particular; or

82. The Panel considers that S 21 (1) (a), (c) and (d) are not applicable to this case. No evidence has been provided in relation in S21(1) (a); S21(a) does not apply. Mr A has not raised negligence or incompetence in performing engineering services as grounds of his appeal. In the early stage of the complaint process Mr A advised the Complaints Research Officer he was not overly concerned by the perceived errors; S21(c) does not apply. The appeal does not relate to obtaining registration or a registration certificate; S21 (d) does not apply.
83. To summarise paragraphs 78 –81. The Panel needs to determine if Mr B has breached the Code of Ethics, Rule 21(b) to an extent that is significantly grave to warrant further investigation.
84. The evidence suggests in early November 2014 Mr B forwarded Company C's structural design documentation to Mr A for the purpose of obtaining a building consent from District Council.
85. Included in the design documentation set was the PS1 which referenced structural drawings S000 to S101/J5293 and Advance Steel drawings AS 0001- AS0398/J5293. The structural drawings were annotated with "for consent drawings only. NOT to be used for construction" [BOD 143] and the specifications were issued "for consent". Some of

the “S” series set included reference to “Company C shop drawing detailing “at detail locations.

86. Included in the 14th November 2014 letter to Mr A, Mr B promoted potential savings in time if both the designer and the steel fabricator used the same 3D programme. With the designer extrapolating details for the building consent application and a steel fabricator, familiar and proficient with the programme extrapolating the information for shop drawings.
87. Mr A, Company F and Ms I (for Mr B) refer to the Advance Steel drawings included in the building consent design package as “shop drawings”.
88. Mr B refers to them as “snippets for building consent, i.e. as being no more than a means to indicate the steel configuration”.
89. The letter did not suggest Company C would produce shop drawings.
90. The PS1 - Design was issued conditional upon site observation being carried out by Company C, with these inspections covering 11 items.
91. Mr A noted additional engineering design input was required for the onsite testing of the backfilling of the north east corner of the house; the change from anchors to rock anchors; redesign of the garage roof; and additional reinforcing.
92. The timesheet evidence suggests Company C redesigned elements of the garage roof/retaining wall during November 2014 [BOD 015 & 016]. This is covered by Rev 1 of the structural drawings, issued late November 2014; i.e. S00 to S011- Rev 1; S020 to 23 Rev 1; A026 Rev 1; S060 Rev 1; S100 to 103 Rev 2; S110-S111 Rev 1 [BOD 277 to 299].
93. The parties agreed (January 2015 agreement) that Mr A had all the drawings he needed for building consent purposes.
94. The building consent was issued by District Council late February 2015.
95. The consented drawings and specification require the steel fabricator to prepare and submit shop drawings to Company C for approval prior to fabrication.
96. Company F were engaged by Mr A to fabricate and install the steelworks (not to prepare shop drawings).
97. The build commenced in March 2015.
98. During the build, Company F and Mr A and Mr B identified several items requiring further engineering design input. This included redesign to address column base plates and their locations relative to the foundations; column upsizing; column concrete filling; steel support for the comfloor system; detailing of the flooring system/steel beam connection; and detailing of the balustrade.

99. Mr B considers these design changes to be “normal consequential sums that one encounters on an extensive job” [BOD 101].
100. Company F fabricated and installed the ground floor steelwork based on the consented drawings and responses from Company C. No shop drawings were approved by Company C.
101. Site observations by Company C staff including Mr B were carried out between March 2015 to August 2015 [BOD 017, 018,022,023-024].
102. The drawings and timesheets suggest redesign of the garage was carried out during March 2015 and was covered by Rev 2 of the structural drawings, i.e. S020, S022, 23, 100 to 103.
103. In August 2015 following an approach from Company F, Mr B advised them in writing that he had steel shop drawings available and payment for this was required prior to the release of this documentation.
104. Further redesign of the garage was carried out in May 2016 and covered by two structural design drawings both numbered S112.
105. Mr A issued a PS3 covering construction early April 2017.
106. Company C issued a PS4 signed by Mr B on the 21 April 2017, with a revised drawing set which included: S00 Rev 4; S01 Rev 1; S02 Rev 2; S03 Rev 1; S05-S011 Rev 1; S020 Rev 2; S021 Rev 1; S022 Rev 3; S023 Rev 2; S024 Rev 1; 26 Rev 1; S060 Rev 1; S100- 103 Rev 2; S110-S111 Rev 1: and S112 Rev 5 (2 different sections (Section 3 and 4) [BOD 248 to 272]
107. Whilst these drawings are issued as “As built”, a number of the drawings continue to reference “consent drawings ONLY NOT to be used for construction”.
108. District Council issued a certificate of compliance following receipt of the PS3 and PS4.
109. Mr A considers Mr B has been dishonest.
110. In consideration to Mr B’s honesty in relation to the shop drawings the evidence suggests:
 - The consented documentation included the requirement that shop drawings be prepared by the steel fabricator and approved by the designer prior to fabrication;
 - Company C used a 3D programme called Advance Steel as a tool for design. This programme also has the potential to be used as a tool for the preparation of steel fabrication shop drawings;
 - Mr B advised Mr A of this potential use and suggested time saving could be had if the steel fabricator had knowledge of the Advance Steel programme and the ability to produce steel shop drawings directly from this Advance Steel programme;

- Company C issued a structural set of drawings (to be used for the building consent application) which contained both a “S” series set of drawings and an “AS” series set of drawings;
- Mr A refers to the “AS” series drawings as shop drawings, Company F referred to these drawings as shop drawings, Ms I (for Mr B) referred to these drawings as shop drawings in her September 2019 email to the Registration Authority [BOD 246], whereas Mr B himself advises these drawings are a means to indicate the steel configuration. The drawings themselves contained no reference to their being shop drawings;
- Mr B has advised the “Company C shop drawing” references at detail locations within the “S” series are references to the “AS” drawing set;
- Mr B offered the Advance Steel programme files to Company F for them to arrange for the preparing shop drawings. Company F declined this offer due in part to the extent of works which had already been carried out without utilisation of the programme and a lack of ability to produce shop drawings for fabrication from the programme;
- During the construction phase changes were made to the “S” series drawings, no changes were made to the “AS” series;
- During August 2015, Mr B advised Company C had steel shop drawings and of the need for Company C to release shop drawings before construction works could continue. Further to payment Company C issued further “S” series drawings.

111. The Panel consider the Mr B’s written communication regarding shop drawings to be unclear, with some reference to the design detailing whilst others is to steel fabrication shop drawings.
112. In consideration to Mr B honesty in relation to whether the drawings were fit for construction, the Panel accepts Mr B’s comment that these are “normal consequential sums that one encounters on an extensive job”.
113. Some redesign/redetailing was necessary to better clarify aspects of the design, some to allow for the finalised ground contours and others to address variances between the design and the build.
114. In consideration to Mr B’s honesty in relation to the “fixing of posts to lower beam unknown supposed welded packer as per contractors oral explanation unable to be verified as Company C was not contacted prior to concrete placement” as-built note on the drawing [BOD 273]. Mr A says the note is not correct as Mr H carried out a prepour inspection on 14 August 2015, which is supported by Company C’s timesheet entry of 14 August 2015 for Mr H [BOD 024],
115. Overall, the Panel considers that whilst the evidence highlights a lack of clarity in Mr B’s written communications, and indicates these to be well below what could reasonably be expected of a CPEng, it does not support an intent on Mr B’s part to mislead Mr A.

116. In his appeal Mr A claimed the Investigating Committee interviewed Mr B but refused myself, “even though I offered to meet in Wellington”. The Registration Authority submits, and the Panel accepts, that the Act allows for the Investigating Committee to regulate its own procedures⁴ and there is no obligation on the Investigating Committee meeting with either or both parties to a complaint.
117. The Panel have considered whether in not meeting with Mr A, Mr A has been disadvantaged.
118. The Panel does not consider Mr A was disadvantaged by not being interviewed in person by the Investigating Committee.
119. The evidence suggests the Investigating Committee was satisfied they understood Mr A’s concerns. Mr A received copies of all correspondence (verbal and written) between the Registration Authority and Mr B and was provided an opportunity and took this opportunity to comment on this correspondence and Mr B’s responses.
120. An appeal to The Council is a rehearing. The parties are provided the opportunity to make submissions and to speak to their submissions.
121. Also, in his appeal Mr A claimed the Investigating Committee took 2 years to make their decision. The Registration Authority has advised the timing is not unreasonable, in the circumstances, given that the formal complaints and disciplinary process could not deliver the outcome desired.
122. The evidence suggests the complaint timing and the process has been long. The duration of the complaint does not change the Panel’s decision.
123. Also, in his grounds of appeal Mr A has claimed the Adjudicator considered that they had to clarify inconsistencies between invoiced for shop drawings or arrears, this has not been explained.
124. The Panel is assisted by the RA’s submission in addition to the Act and the Rules on this matter. The Panel considers invoicing falls outside our jurisdiction and therefore make no further comment on this matter.

Outcome

125. The Panel concluded the complaint should be dismissed on the following grounds:
126. The aspect of the complaint relating to Mr B’s honesty and integrity with regards to his professional engineering services is dismissed under Rule 57(a) of the CPEng Rules.
127. The appeal is therefore declined.
128. The Panel considers that all costs associated with this appeal should fall where they lie.

⁴ Rule 72(2)

Dated this 10th day of November 2020

Signed by the Appeals Panel

Ms Sandra Hardie
Principal



Ms Sarah Sinclair



Mr Alan Winwood

